Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Court of International Trade

Vol. 16 AUGUST 25, 1982 No. 34

This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Wash., D.C. 20402

U.S. Customs Service

Treasury Decisions

(T.D. 82-141)

Bonds

Approval and Discontinuance of Consolidated Aircraft Bonds (Air Carrier Blanket Bonds), Customs Form 7605

The following consolidated aircraft bonds have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: August 4, 1982.

Name of principal and surety	Date term commences	Date of approval	Filed with district director/area director/amount
Zantop International Airlines, Inc., Willow Run Airport, Ypsilanti, MI; Washington International Ins. Co. (PB 2/26/73) D 7/19/82 [1] The foregoing principal has been designated as a carrier of bonded merchandise.	Aug. 18, 1981	July 19,1982	Detroit, MI $100,000

[1] Surety is St. Paul Fire and Marine Ins. Co.

BON-3-01

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 82-142)

Customs Delegation Order No. 64

Order of the Commissioner of Customs Delegating Authority To Conduct On-site Inspections of Laboratories Operated by Customs-approved Public Gaugers

By virtue of the authority vested in me by Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241), as amended, I hereby delegate to the Director of the Technical Services Division the authority to conduct on-site inspections of commercial laboratories operated by Customs-approved public gaugers. The Director of the Technical Services Division may redelegate this authority to the Directors of the Customs Field Laboratories.

This delegation of authority does not preclude a Customs district director from conducting additional checks, audits, or investigations to verify the gauging operations in his district.

Dated: July 26, 1982.

WILLIAM VON RAAB,
Commissioner of Customs.

[Published in the Federal Register, August 13, 1982 (47 FR 35391)]

(T.D. 82-143)

Establishment of a Customs Station at Galliano, Louisiana

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding Galliano, Louisiana, to the list of designated Customs stations. The Galliano Customs station, which is currently in operation, is located in the New Orleans Customs District, and is supervised by the Morgan City, Louisiana, port of entry. It provides service to the Louisiana Offshore Oil Port (LOOP), which has its control center there.

EFFECTIVE DATE: August 13, 1982.

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Customs Service has primary responsibility for: (1) collecting revenue (including Customs duties, excise taxes, fees and penalties) due on imported merchandise; (2) processing persons, cargo, baggage, and mail entering the United States from foreign countries;

(3) enforcing import and export prohibitions to protect the general welfare and security of the United States; and (4) collecting international trade statistics.

Individuals, vehicles, and merchandise generally enter the United States through established Customs ports of entry and stations.

Customs Ports of Entry

Customs ports of entry are places (seaports, airports, or land border ports) designated by the Secretary of the Treasury where Customs officers or employees are assigned to accept entries of merchandise, clear passengers, collect duties and enforce the various provisions of Customs and related laws.

The Secretary of the Treasury is advised by the Commissioner of Customs in matters affecting the establishment, abolishment, or other change in ports of entry. The Commissioner coordinates these matters with other Federal inspection agencies, and, when appropriate, with Canadian or Mexican officials. Staffing at ports of entry may range from one to several hundred employees, depending upon the volume of business. However, most new ports of entry are staffed by at least a port director, one or more inspectors, and a secretary.

Customs ports of entry are established under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR, 1949–1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101–5 (47 FR 2449).

Customs Stations

Customs stations are places other than ports of entry where Customs officers or employees are placed for the purpose of entering and clearing vessels and other carriers, accepting entries of merchandise, examining baggage, collecting duties, and enforcing the various provisions of Customs laws and related laws. Stations may be established or terminated by the Commissioner of Customs.

The significant difference between ports of entry and stations is that, at stations, the Federal Government is reimbursed for:

(1) The salaries and expenses of its officers or employees for services rendered in connection with the entry or clearance of vessels; and

(2) Except as otherwise provided by the Customs Regulations, the expenses (including any per diem allowed in lieu of subsistence), but not the salaries of its officers or employees, for services rendered in connection with the entry or delivery of merchandise.

Customs stations are established under the authority of section 1, 37 Stat. 434, section 301, 80 Stat. 379; 5 U.S.C. 301, 19 U.S.C. 1.

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to importers, carriers, and the public, the Customs Service has established a Customs station at Galliano, Louisiana. The Galliano Customs station provides service to the Louisiana Offshore Oil Port (LOOP), which has its control center there. Services performed by Customs personnel at Galliano include the handling of entries, checking of required licenses, and physical supervision of the return of equipment and vessels from the LOOP.

To reflect the establishment of the Galliano Customs station, it is necessary to amend section 101.4(c), Customs Regulations (19 CFR 101.4(c)), which lists the designated Customs stations, the ports of entry having supervision over the stations, and the districts in which they are located.

Amendment to the Regulations

PART 101—GENERAL PROVISIONS

Section 101.4 (Amended).

Section 101.4(c) is amended by adding "Galliano, La." in the column headed "Customs stations" immediately opposite "New Orleans, La." in the column headed "District," and by adding "Morgan City." on the same line in the column headed "Port of entry having supervision."

(R.S. 251, as amended, section 1, 37 Stat. 434, section 624, 46 Stat. 759, section 301, 80 Stat. 379 (5 U.S.C. 301, 19 U.S.C. 1, 66, 1624))

Inapplicability of Delayed Effective Date and Notice Requirement

Because the subject matter of this document does not constitute a departure from established policy or procedure and the establishment of a Customs station confers a benefit on the public by increasing the availability of service, pursuant to 5 U.S.C. 553(d), a delayed effective date is not required. The subject matter of this document relates solely to agency organization. Accordingly, pursuant to 5 U.S.C. 553(b)(A), notice and public procedure are not required.

Executive Order 12291 and Regulatory Flexibility Act

Because this amendment is not a "major rule" within the criteria provided in section 1(b) of E.O. 12291, a regulatory impact analysis is not required. Further, because notice and public procedure are not required, this document is not subject to the provisions of Pub. L. 96-354, the Regulatory Flexibility Act.

DRAFTING INFORMATION

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: June 7, 1982.

ALFRED R. DE ANGELUS,
Deputy Commissioner of Customs.

[Published in the Federal Register, August 13, 1982 (47 FR 35183)]

---

19 CFR Part 4

(T.D. 82-144)

Implementation of United States-Canada Pacific Albacore Tuna Treaty

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to grant entitled Canadian fishing vessels port access and landing rights for albacore tuna in specified United States ports. This action is necessary to implement the Treaty between the Governments of the United States and Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges.

EFFECTIVE DATE: August 13, 1982.

FOR FURTHER INFORMATION CONTACT: Larry L. Burton, Carrier Rulings Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

The Treaty between the Government of the United States and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, signed May 26, 1981, was ratified by the Senate on July 20, 1981, and entered into force on July 29, 1981. The Treaty was necessary to resolve difficulties which had arisen between the United States and Canada concerning albacore tuna fishing on the Pacific Coast.

Specifically, as it relates to the Customs Service, Article III of the Treaty provides for access, including landing rights for the catch, by Canadian albacore vessels to the United States ports designated in Annex B to the Treaty, *i.e.,* Astoria and Coos Bay, Oregon; Bellingham, Washington; and Crescent City, California.

Accordingly, that Article establishes a limited exception to the Nicholson Act, second sentence of subsection (a), 46 U.S.C. 251, as amended, which prohibits foreign-flag vessels from landing in the United States fish or fish products caught or received on the high seas "except as otherwise provided by treaty * * * to which the United States is a party, * * *."

As presently written, section 4.96, Customs Regulations (19 CFR 4.96), would prohibit a Canadian fishing vessel from landing its catch of albacore tuna taken or received on the high seas at a port or place in the United States. Therefore, to implement the provisions of the Treaty, Customs finds it is necessary to amend that section, as set forth below, to permit entitled Canadian fishing vessels to put in, and land their catch taken or received on the high seas at specified United States ports. It is anticipated that the 1982 albacore tuna season will begin sometime in the month of June in Northern Hemisphere waters.

Inapplicability of Notice and Delayed Effective Date Provisions

Because the amendment merely implements the provisions of a treaty of the United States, it has been determined that, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are impracticable, unnecessary, and contrary to the public interest. Because the northern migration of the albacore tuna and its appearance off the California coast is not predictable with great certainty, Customs has determined that to ensure efficient facilitation of the Treaty the amendment should become effective as soon as possible. Accordingly, a delayed effective date has not been set pursuant to 5 U.S.C. 553(d)(3).

Executive Order 12291 and Regulatory Flexibility Act

It has been determined that the amendment is not a "major rule" within the criteria provided in section 1(b) of E.O. 12291, and therefore no regulatory impact analysis is required.

In addition, it has been determined that the amendment is not subject to the provisions of Pub. L. 96-354, the Regulatory Flexibility Act (5 U.S.C. 601-612), because publication of a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or any other law.

Drafting Information

The principal author of this document was Todd J. Schneider, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in CFR Part 4

Customs inspection and duties, fisheries, fishing vessels, imports, reporting requirements.

Amendment to the Regulations

Section 4.96, Customs Regulations (19 CFR 4.96), is revised as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

Section 4.96 is revised to read as follows:

Section 4.96 Fisheries.

(a) As used in this section:

(1) The term "convention vessel" means a Canadian fishing vessel which, at the time of its arrival in the United States, is engaged only in the North Pacific halibut fishery and which is therefore entitled to the privileges provided for by the Halibut Fishing Vessels Convention between the United States and Canada signed at Ottawa, Canada, on March 24, 1950 (T.D. 52862);

(2) The term "nonconvention fishing vessel" means any vessel other than a convention vessel which is employed in whole or in part in fishing at the time of its arrival in the United States and

(i) Which is documented under the laws of a foreign country,

(ii) Which is undocumented, of 5 net tons or over, and owned in whole or in part by a person other than a citizen of the United States, or

(iii) Which is undocumented, of less than 5 net tons, and owned in whole or in part by a person who is neither a citizen nor a resident of the United States;

(3) The term "nonconvention cargo vessel" means any vessel which is not employed in fishing at the time of its arrival in the United States, but which is engaged in whole or in part in the transportation of fish or fish products [131a] and

(i) Which is documented under the laws of a foreign country or

(ii) Which is undocumented and owned by a person other than a citizen of the United States;

(4) The term "treaty vessel" means a Canadian fishing vessel which at the time of its arrival in the United States is engaged in the albacore tuna fishery and which is therefore entitled to the privileges provided for by the treaty with Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, entered into force at Ottawa, Canada, on July 29, 1981 (T.D. 81-227); and

(5) The term "fishing" means the planting, cultivation, or taking of fish, shell fish, marine animals, pearls, shells, or marine vegetation, or the transportation of any of those marine products to the United States by the taking vessel or another vessel under the complete control and management of a common owner or bareboat charterer.

378-296 0 - 82 - 2

(b) Except as provided for in paragraph (d), (e), (g), or (h) of this section, no vessel employed in fishing, other than a vessel of the United States or a vessel of less than 5 net tons owned in the United States, shall come into a port or place in the United States.[131b]

(c) A vessel of the United States to be employed in fishing may be enrolled and licensed, or licensed, depending upon its size, or registered. If registered, the vessel must be entitled to be licensed or enrolled and licensed for the fisheries.

(d) A convention vessel may come into a port of entry on the Pacific coast of the United States, including Alaska, to land its catch of halibut and incidentally-caught sable fish, or to secure supplies, equipment, or repairs. Such a vessel may come into any other port of entry or, if properly authorized to do so under section 101.4(b) of this chapter, into any place other than a port of entry, for the purpose of securing supplies, equipment, or repairs only, but shall not land its catch. A convention vessel which comes into the United States as provided for in this paragraph shall comply with the usual requirements applicable to foreign vessels arriving at and departing from ports of the United States.

(e) A nonconvention fishing vessel, other than a treaty vessel, may come into a port of entry in the United States or, if granted permission under section 101.4(b) of this chapter, into a place other than a port of entry for the purpose of securing supplies, equipment, or repairs, but shall not land its catch. A nonconvention fishing vessel which comes into the United States as provided for in this paragraph shall comply with the usual requirements applicable to foreign vessels arriving at and departing from ports of the United States.

(f) A nonconvention cargo vessel, although not prohibited by law from coming into the United States, shall not be permitted to land in the United States its catch of fish taken on the high seas or any fish or fish products taken on board on the high seas from a vessel employed in fishing or in the processing of fish or fish products, but may land fish taken on board at any place other than the high seas upon compliance with the usual requirements. Before any such fish may be landed the master shall satisfy the district director that the fish were not taken on board on the high seas by presenting declarations of the master and two or more officers or members of the crew of the vessel, of whom the person next in authority to the master shall be one, or other evidence acceptable to the district director which establishes the place of lading to his satisfaction.

(g) A treaty vessel may come into a port of place of the United States named in Annex B of the Treaty with Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges to land its catch of albacore tuna, or to secure fuel, supplies, equipment and repairs. Such a vessel may come into any other port of entry or, if properly

authorized to do so under section 101.4(b) of this chapter, into any place other than a port of entry, for the purpose of securing supplies, equipment, or repairs only, but shall not land its catch. A treaty vessel which comes into the United States as provided for in this paragraph shall comply with the usual requirements applicable to foreign vessels arriving at and departing from ports of the United States.

(h) A convention vessel, a nonconvention fishing vessel, a nonconvention cargo vessel, or a treaty vessel, which arrives in the United States in distress shall be subject to the usual requirements applicable to foreign vessels arriving in distress. While in the United States, supplies, equipment, or repairs may be secured, but, except as specified in the next sentence, fish shall not be landed unless the vessel's master, or other authorized representative of the owner, shows to the satisfaction of the district director that it will not be possible, by the exercise of due diligence, for the vessel to transport its catch to a foreign port without spoilage, in which event the district director may allow the vessel upon compliance with all applicable requirements, to land, transship, or otherwise dispose of its catch. Nothing herein shall prevent, upon compliance with normal Customs procedures, a convention vessel arriving in distress from landing its catch of halibut and incidentally-caught sable fish at a port of entry on the Pacific coast, including Alaska; a foreign cargo vessel arriving in distress from landing its cargo of fish taken on board at any place not on the high seas; or a treaty vessel arriving in distress from landing its catch of albacore tuna at a port of entry on the Pacific coast, including Alaska.

(i) A registered vessel may be cleared for a whaling voyage [131c] under the same terms and conditions as though it were enrolled and licensed for the whale fishery.

(R.S. 251, as amended, 4311, as amended, section 624, 46 Stat. 759 (19 U.S.C. 66, 1624; 46 U.S.C. 251)).

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: July 21, 1982.
JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, August 13, 1982 (47 FR 35182)]

(19 CFR Parts 4, 6, 10, 12, 18, 19, 22, 24, 101, 123, 146, 147, 148, and 161)

(T.D. 82-145)

CONFORMING AMENDMENTS TO THE CUSTOMS REGULATIONS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: In accordance with Customs policy of periodically reviewing its regulations to ensure that they are current, this document makes certain conforming changes to the Customs Regulations which are necessary because of various executive, legislative, and administrative actions. The changes merely conform the regulations to existing law or practice. They are nonsubstantive and essentially are procedural.

EFFECTIVE DATE: August 16, 1982.

FOR FURTHER INFORMATION CONTACT: Marvin M. Amernick, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8237).

SUPPLEMENTARY INFORMATION:

Background

As part of its program to keep its regulations current, the Customs Service has determined that various executive, legislative, and administrative actions require conforming amendments to numerous parts of the Customs Regulations (Chapter I, Title 19, Code of Federal Regulations (19 CFR Chapter I)). Following is a list of these actions, the affected sections of the regulations, and the necessary changes:

Discussion of Changes

1. Customs Form 3137, "Application for Customs Dock Pass", has been abolished, requiring the removal of section 4.1(f), relating to applications to Customs for permission to leave a vessel and go on the dock to meet persons arriving from abroad before the vessel has been inspected by Customs and brought into the dock or anchorage at which cargo is to be unladen and until all passengers have been landed from the vessel.

2. The Customs Regulations do not list those countries which ordinarily do not permit vessels of the United States to enter and trade. To clarify section 4.20(c), relating to the assessment of tonnage taxes and light money on foreign vessels entering a port in the United States to trade, a new footnote, 3a, is being added to the table in section 4.20(c) stating that Democratic Kampuchea (Cambodia), the Democratic People's Republic of Korea (North Korea), and the Socialist Republic of Vietnam, ordinarily do not permit vessels of the United States to enter and trade.

3. Section 4.50(b), relating to vessel passenger lists, must be amended by removing a reference to section 4.51 which was deleted by T.D. 69-266, published in the Federal Register on December 31, 1969 (34 FR 20422).

4. Customs Form 1316, "Certificate of Record," now is designated as "Coast Guard Form-1316." Section 4.61(c), relating to clearance of vessels, must be amended to refer to the correct form.

5. Customs Form 3451, "Declaration of Foreign Repairs to Vessels or Aircraft," and Customs Form 7535, "Vessel/Aircraft Foreign Repair or Equipment," have been consolidated as Customs Form 226, "Record of Vessel/Aircraft Foreign Repair or Equipment Purchase," requiring amendments to sections 6.7(d) and (e), relating to documents for the entry of aircraft.

6. Customs Form 3861, "Report of Irregular (or Short) Delivery of Bonded Merchandise," has been abolished, requiring an amendment to section 6.22(c), relating to the transportation of air cargo.

7. Customs Form 3289, "Declaration for Free Entry of Reimported Metal Drums," has been abolished, requiring an amendment to section 10.7(b), relating to containers or holders used in the shipment or transportation of merchandise.

8. Customs Form 3313, "Declaration for Free Entry of Live Game Animals or Birds," has been abolished, requiring the removal of section 10.76(c), relating to the entry of game animals and birds.

9. Sections 1.315 through 1.322, Title 21, CFR, have been redesignated as sections 1.83 through 1.99 of the same title. Accordingly, section 12.1(a), relating to Customs enforcement of the Federal Food, Drug, and Cosmetic Act, must be amended.

10. Various typographical errors have been found throughout Part 12, relating to the importation of special classes of merchandise, necessitating corrections to sections 12.1(c), 12.27, 12.28(a), 12.29, 12.30, 12.37, 12.48, and 12.107(b).

11. The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services. Further, authority to issue regulations under the Federal Hazardous Substances Act was transferred from the former Department of Health, Education, and Welfare to the Consumer Product Safety Commission. Section 12.1, relating to Customs cooperation with other federal agencies, must be amended to reflect both of these changes.

12. Sections 191.265 through 191.272, Title 21, CFR, have been redesignated as sections 1500.265 through 1500.272, Title 16, CFR. Therefore, section 12.1(c), relating to Customs enforcement of the Federal Hazardous Substances Act, must be amended.

13. The Federal Caustic Poison Act (15 U.S.C. 401 *et seq.*) has been repealed. Accordingly, section 12.1(d), which refers to this Act, must be removed.

14. The Federal Import Milk Act, 21 U.S.C. 141–149, has been amended. Section 12.7, relating to importations of milk and cream, must be amended to note the new citation to this Act.

15. Several footnotes in Part 12, relating to special classes of merchandise, refer to the "Customs Regulations of 1943." The correct cite is the "Customs Regulations." Therefore, footnotes 6, 8, 9, 10, 11, 13, 16b, 20, and 23 of Part 12 must be amended.

16. Section 306, Tariff Act of 1930 (19 U.S.C. 1306), has been amended several times. Accordingly, it is necessary to further amend footnote 8 to section 12.8 by inserting the current text.

17. Organizational changes within the Department of Agriculture necessitate changes to references to various Departmental offices and programs set forth in sections 12.16(b) and 12.23(d).

18. The Division of Biologics Standards has been renamed the Bureau of Biologics, under the Food and Drug Administration rather than the National Institutes of Health. Sections 12.22 and 12.23 must be amended to reflect this change.

19. Section 130.3, Title 21, CFR, has been redesignated section 312.1. Section 12.23(a) must be amended accordingly.

20. Section 73.16, Title 42, CFR, has been redesignated section 601.22, Title 21, CFR, requiring an amendment to section 12.23(a).

21. By an Act of Congress dated April 22, 1974 (P.L. 93-271, 88 Stat. 92), the Fish and Wildlife Service was created to assume the duties of the Bureau of Sport Fisheries and Wildlife. It is necessary to amend sections 12.26 and 12.29 to reflect this change.

22. The positions of "collector" and "examiner" of Customs have been replaced by the position of "district director." Section 12.26(e) must be amended to reflect this change.

23. The Endangered Species Act of 1969 has been repealed. The provisions of that Act now are set forth in the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*). Section 12.26(g) must be amended to refer to the 1973 Act.

24. Section 141, Title 7, U.S.C., has been repealed, and succeeded by section 150bb, Title 7, U.S.C. The parenthetical citation at the end of section 12.31, footnote 18, and the heading to section 12.31 must be amended accordingly.

25. Because section 281, Title 7, U.S.C., has been amended, section 12.32 and footnote 19 thereto also must be amended.

26. Sections 4802 and 4805, Title 26, U.S.C., superseding sections 2654 and 2655 of the same Title, were repealed by the Tax Reform Act of 1976 (P.L. 94-455). It is necessary to remove: (1) section 12.35 and the references to 26 U.S.C. 4802 and 4805(a) in the parenthetical citation at the end of section 12.34; and (2) amend footnotes 21 and 22 to sections 12.34 and 12.35, respectively.

27. Section 1263, Title 18, U.S.C., has been amended. Accordingly, footnote 25 to section 12.38 must be amended.

28. Section 1305, Title 19, U.S.C., prohibits the importation of articles for performing unlawful abortions but not the importation of articles related to lawful abortions. It is necessary to amend section 12.40(f) to reflect this fact.

29. Section 504, Title 18, U.S.C., has been amended. The text of footnote 32 to section 12.48 must be amended to reflect the current wording of the statute.

30. Sections 85.201 through 85.204, Title 40, CFR, the regulations of the Environmental Protection Agency, have been redesignated

as sections 85.1502 through 85.1505. Therefore, references to 40 CFR 85.201 through 85.204 in section 12.73 must be amended accordingly.

31. Part 78, Title 42, CFR, the regulations of the Public Health Service, Department of Health and Human Services, has been redesignated as Part 1005, title 21, CFR, the regulations of the Food and Drug Administration, Department of Health and Human Services, requiring that references in section 12.91 be amended.

32. British Honduras has been renamed Belize. The list of countries in section 12.105, relating to pre-Columbian monumental architectural sculptures or murals, must be amended to reflect this change.

33. Sections 12.105 through 12.109, were added to the Customs Regulations by T.D. 73-119 which became effective on June 1, 1973. Section 12.107(b) must be amended to reflect the effective date of these regulations.

34. The portion of Title II, Pub. L. 92-587, quoted in section 12.109(b), has been codified at 19 U.S.C. 2093(b). Section 12.109(b) must be amended to add this citation.

35. Section 18.1(b), relating to the transportation of merchandise in bond between the ports of New York, Newark, and Perth Amboy, must be amended to reflect that the area directors of Customs for New York may permit, upon request, transfer of merchandise in bond by bonded cartmen or lightermen. This section currently refers to the obsolete position of district director of Customs at New York.

36. Section 19.4(e), relating to Customs supervision of bonded warehouses, must be amended to reflect the redesignation of section 23.35 as section 161.1, by T.D. 72-213.

37. Customs Form 4475, "Drawback—Extract From Bill of Lading," has been abolished, requiring an amendment to section 22.29(f).

38. Because the date of the national observance of Veterans Day has been changed from the fourth Monday of October to November 11, section 101.6(a), relating to the closing of Customs offices on national holidays, must be amended. In addition, footnote 5 to section 24.16(b), which also lists the national holidays, is being revised to refer to section 101.6(a).

39. Customs Form 7533-A, "Inward Manifest of Baggage Car," has been replaced by Customs Form 7533, "Inward Cargo Manifest for Vessel under Five Tons," requiring amendments to sections 123.4(d) and 123.61, relating to baggage arriving in baggage cars.

40. Customs Form 7533-B, "U.S. Customs In-Transit Manifest," expired on October 31, 1979. Customs Form 7512-B, "U.S.-Canada Transit Manifest," and Customs Form 7533-C, "U.S. Customs In-Transit Manifest," are used in its place. To reflect this change, sections 123.22(c) (1), (2), and (4) and 123.51 (d) and (e), must be amended.

41. The zone forms described in Part 146, relating to the admission, status, handling, and removal of merchandise in foreign-trade zones, have been replaced by new Customs Forms 214, 215, and 216. Amendments to various sections of Part 146 are required to reflect these changes.

42. Section 147.1(b) must be amended by removing a reference to certain Commerce Department regulations pertaining to trade fairs.

43. Customs Form 6061, "Declaration and Entry for Personal and Household Effects of U.S. Personnel," has been replaced by Customs Form 3299, "Declaration for Free Entry of Unaccompanied Articles," requiring an amendment to section 148.77. In addition, this section must be amended to show that Department of Defense Form 1252, as well as Customs Form 3299 may be used as the declaration and entry form for unaccompanied personal and household effects of military and civilian employees of the United States.

44. Item 841.10, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), provides that, upon the request of the Department of State, office supplies, equipment and other articles for the official use of representatives of foreign governments, or of personnel of public international organizations, on duty in the United States, may be imported duty-free. However, the corresponding provision in section 148.86, only pertains to articles for the official use of representatives of foreign governments.

In addition, item 842.10, TSUS, provides that upon the request of the Department of State, articles which are the property of foreign governments or public international organizations which will remain the property of such governments or of such organizations and will be used only in connection with their non-commercial functions, may be admitted duty-free. However, the corresponding provision in section 148.89 only pertains to the property of public international organizations.

In order to conform the regulations to the Tariff Schedules, changes to sections 148.86 and 148.89 are necessary.

45. Section 161.2, relating to Customs enforcement of other agencies laws, must be amended to reflect the suspension by Pub. L. 93-110 of 31 U.S.C. 443, governing the private acquisition and use of gold.

Inapplicability of Public Notice and Delayed Effective Date Provisions

Inasmuch as these amendments merely conform the Customs Regulations to existing law or practice, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

EXECUTIVE ORDER 12291

Because this will not result in a "major rule" as defined by section 1(b) of E.O. 12291, the regulatory analysis and review prescribed by section 3 of the E.O. is not required.

INAPPLICABILITY OF REGULATORY FLEXIBILITY ACT

This document is not subject to the provisions of sections 603 and 604 of title 5, United States Code, as added by section 3 of Pub. L. 96-354, the "Regulatory Flexibility Act." That Act does not apply to any regulation, such as this, for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551, *et seq.*), or any other statute.

DRAFTING INFORMATION

The principal author of this document was Lawrence P. Dunham, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

FEDERAL REGISTER THESAURUS

On January 22, 1981, the Office of the Federal Register published a final rule (47 FR 7162) which requires agencies to identify major topics and categories of persons affected in their regulations by using standard terms established in the Federal Register Thesaurus of Indexing Terms.

Accordingly, the index terms listed below are applicable to this regulatory project:

19 CFR Part 4
- Vessels
- Passenger vessels

19 CFR Part 6
- Air carriers
- Air transportation
- Aircraft
- Airports

19 CFR Part 10
- Packaging and containers
- Wildlife

19 CFR Part 12
- Agriculture
- Bees
- Endangered and threatened wildlife
- Livestock
- Meat and meat products
- Pesticides and pests

19 CFR Part 18
- Customs official

19 CFR Part 19
- Warehouse

378-296 0 - 82 - 3

19 CFR Part 22
Exports
19 CFR Part 24
Accounting
19 CFR Part 101
Organization and functions
19 CFR Part 123
Canada
Reporting requirements
19 CFR Part 146
Foreign-trade zones
19 CFR Part 147
Fairs and expositions
19 CFR Part 148
Armed forces
Foreign officials
Government employees
International organizations
Military personnel
19 CFR Part 161
Law enforcement

AMENDMENT TO THE REGULATIONS

Parts 4, 6, 10, 12, 18, 19, 22, 24, 101, 123, 146, 147, 148, and 161, Customs Regulations (19 CFR Parts 4, 6, 10, 12, 18, 19, 22, 24, 101, 123, 146, 147, 148, and 161), are amended as set forth below.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: July 21, 1982.
JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, August 16, 1982 (47 FR 35473)]

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. Section 4.1 is amended by removing paragraph (f) and marking it "[Reserved]".

2. Section 4.20(c) is amended by inserting "3a" at the end of line 2 under the heading "Foreign vessels" in the table in section 4.20(c) and inserting the following after footnote 3 in the table in section 4.20(c): "3a. The following countries ordinarily do not permit vessels of the United States to enter and trade: Democratic Kampuchea (Cambodia); Democratic People's Republic of Korea (North Korea); and, the Socialist Republic of Vietnam."

3. Section 4.50(b) is amended by removing the phrase ", except section 4.51,".

4. Section 4.61(c) is amended by inserting "Coast-Guard Form 1316" in place of "Customs Form 1316".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 6—AIR COMMERCE REGULATIONS

1. Section 6.7(d) is amended by inserting "Customs Form 226" in place of "Customs Form 3415", wherever it appears.

2. Section 6.7(e) is amended by inserting "Customs Form 226" in place of "a declaration in Customs Form 3415 or an entry on Customs Form 7535".

3. Section 6.22(C) is amended by inserting the following in place of the fifth and sixth sentences:

6.22 Transportation of transit air cargo to an interior port of destination.

* * * * * * *

(C) * * *

The report must be made to, and action promptly taken thereon by, Customs at the port of arrival in the manner specified in sections 18.6 and 18.8 of this chapter. At the port of arrival Customs must make the determination of tax and duty due based on information in the report, in the permit copy retained there, and any necessary information obtained from the carriers. * * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. Section 10.7(b) is amended by inserting "and (2) there is filed in connection with the entry" in place of "and (2) there are filed in connection with the entry a declaration of the importer on Customs Form 3289 and".

2. Section 10.76 is amended by removing paragraph (c) and marking it "[Reserved]".

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. Section 12.1(a) is amended by inserting "Secretary of Health and Human Services" in place of "Secretary of Health, Education, and Welfare" and "21 CFR 1.83–1.99" in place of "21 CFR 1.315–1.322".

2. Section 12.1(c) is revised to read as follows:

12.1 Cooperation with certain agencies; joint regulations.

* * * * * * *

(c) *Federal Hazardous Substances Act.* The importation of hazardous substances, misbranded hazardous substances, or banned hazardous substances as defined in section 2 of the Federal Hazardous Substances Act, as amended (15 U.S.C. 1261), is governed by regulations issued under the authority of sections 10(b) and 14 of the Act, as amended (15 U.S.C. 1269, 1273), by the Consumer Product Safety Commission (16 CFR 1500.265–272).

3. Section 12.1 is further amended by removing paragraph (d).

4. Section 12.7(a) is amended by inserting a comma in place of the semicolon after the citation "44 Stat. 1101" and adding "as amended;" immediately after the comma.

5. Sections 12.7 (a) and (b) are amended by substituting "Department of Health and Human Services" for "Department of Health, Education, and Welfare."

6. Footnote 6 to section 12.7 is amended by removing "of 1943".

7. Sections 12.8 (a) and (b) are amended by substituting "Food Safety and Inspection Service" for "Food Safety and Quality Service" wherever the latter term appears.

8. Footnote 8 to section 12.8, paragraph (a) is revised to read as follows:

[8] "(a) If the Secretary of Agriculture determines that rinderpest or foot-and-mouth disease exists in any foreign country, he shall officially notify the Secretary of the Treasury and give public notice thereof, and thereafter, and until the Secretary of Agriculture gives notice in a similar manner that such disease no longer exists in such foreign country, the importation into the United States of cattle, sheep, or other ruminants, or swine, or of fresh, chilled, or frozen meat of such animals, from such foreign country, is prohibited: *Provided,* That wild ruminants or swine may be imported from any such country upon such conditions, including post entry conditions, to be prescribed in import permits or in regulations, as the Secretary may impose for the purpose of preventing the dissemination of said diseases into or within the United States: *And provided further,* That the subsequent distribution, maintenance, and exhibition of such animals in the United States shall be limited to zoological parks approved by said Secretary as meeting such standards as he may by regulation prescribe for the purpose of preventing the dissemination of said diseases into or within the United States. The Secretary may at any time seize and dispose of any such animals which are not handled in accordance with the conditions imposed by him or which are distributed to or maintained or exhibited at any place in the United States which is not then an approved zoological park, in such manner as he deems necessary for said purpose."

9. Footnote 8 is further amended by removing paragraph (b) and marking it "[Reserved]" and removing "of 1943" from paragraph (c).

10. Section 12.16(a) is amended by revising the cite to read "section 402(b) of the Federal Seed Act of August 9, 1939 (7 CFR 201)." [9]

11. Section 12.16(b) is amended by inserting the term "Livestock, Meat, Grain, and Seed Division," in place of the term "Grain Division,".

12. Footnote 9 to section 12.16 is amended by removing "of 1943".

13. Footnote 10 to section 12.17 is amended by removing "of 1943".

14. Section 12.21 is amended by substituting "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare."

15. Sections 12.22 and 12.23 are amended by inserting the term "Bureau of Biologics" in place of "Division of Biologics Standards" wherever the latter appears.

16. Section 12.22 is further amended by inserting "Food and Drug Administration, 8800 Rockville Pike, Bethesda, Md. 20014" in

place of "National Institutes of Health, Bethesda, Md. 20014" in the third sentence.

17. Section 12.23(a) is amended by inserting "312.1" in place of "130.3", "21 CFR 312.1" in place of "21 CFR 130.3", "601.22" in place of "73.16", and "21 CFR 601.22" in place of "42 CFR 73.16".

18. Section 12.23(d) is amended by inserting the term "Veterinary Services, Animal and Plant Health Inspection Service (APHIS)" in place of "Animal Health Division".

19. Footnote 11 to section 12.24 is amended by removing "of 1943".

20. Section 12.26 is amended by removing "Bureau of Sport Fisheries and Wildlife" wherever it appears. Further, wherever "Bureau of Sport Fisheries and Wildlife" appears without being followed by "Fish and Wildlife Service," the latter term shall be inserted in place of "Bureau of Sport Fisheries and Wildlife".

21. Section 12.26(e) is amended by inserting "district director" in place of "examiner", "collector", and "collector of Customs".

22. Section 12.26(g) is amended by inserting "Endangered Species Act of 1973, 16 U.S.C. 1531" in place of "Endangered Species Conservation Act of 1969, 16 U.S.C. 688cc" in the first sentence.

23. Section 12.28 is amended by removing "(a)" at the beginning of the text and by inserting "in the manner" in place of "it (sic) either manner" within the clause beginning "there is presented documentation".

24. Footnote 16 to section 12.29 is amended by inserting "severed" in place of "served" in the last paragraph of 2(c)(ii).

25. Section 12.29(c) is amended by removing "Bureau of Sport Fisheries and Wildlife".

26. Footnote 16b to section 12.29 is amended by deleting "of 1943".

27. Footnote 17b to section 12.30 is amended by inserting the small letter "l" in place of the number "1" in the parenthetical expression following "16 U.S.C. 916–916".

28. Footnote 18 to section 12.31 is revised to read as follows:

[18] (a) "No person shall knowingly move any plant pest from a foreign country into or through the United States, or interstate, or knowingly accept delivery of any plant pest moving from any foreign country into or through the United States, or interstate, unless such movement is authorized under general or specific permit from the Secretary and is made in accordance with such conditions as the Secretary may prescribe in the permit and in such regulations as he may promulgate under this section to prevent the dissemination into the United States, or interstate, of plant pests." (7 U.S.C. 150bb(a))

(b) "The Secretary may refuse to issue a permit for the movement of any plant pest when, in his opinion, such movement would involve a danger of dissemination of such pests. The Secretary may permit the movement of host materials otherwise barred under the Plant Quarantine Act when they must necessarily accompany the plant pest to be moved." (7 U.S.C. 150bb(b))

(c) "As used in this chapter, except where the context otherwise requires:"

"Plant pest" means any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic

plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products or plants." (7 U.S.C. 150aa).

29. The heading of section 12.31 is amended by inserting "Plant pests." in place of "Injurious insects."

30. Section 12.32 is amended by removing "adult" wherever it appears.

31. Footnote 19 to section 12.32 is revised to read as follows:

[19] "(a) In order to prevent the introduction and spread of diseases and parasites harmful to honeybees, and the introduction of genetically undesirable germ plasm of honeybees, the importation into the United States of all honeybees is prohibited, except that honeybees may be imported into the United States—

"(1) By the United States Department of Agriculture for experimental or scientific purposes, or

"(2) From countries determined by the Secretary of Agriculture—

"(A) To be free of diseases or parasites harmful to honeybees, and undesirable species or subspecies of honeybees; and

"(B) To have in operation precautions adequate to prevent the importation of honeybees from other countries where harmful diseases or parasites, or undesirable species or subspecies, of honeybees, exist.

"(b) Honeybee semen may be imported into the United States only from countries determined by the Secretary of Agriculture to be free of undesirable species or subspecies of honey bees, and which have in operation precautions adequate to prevent the importation of such undesirable honeybees and their semen.

"(c) Honeybees and honeybee semen imported pursuant to subsections (a) and (b) of this section shall be imported under such rules and regulations as the Secretary of Agriculture and the Secretary of the Treasury shall prescribe.

"(d) Except with respect to honeybees and honeybee semen imported pursuant to subsections (a) and (b) of this section, all honeybees or honeybee semen offered for import or intercepted entering the United States shall be destroyed or immediately exported.

"(e) As used in this chapter, the term "honeybee" means all life stages and the germ plasm of honeybees of the genus Apis, except honeybee semen." (7 U.S.C. 281)

---

32. Section 12.34(e) is amended by removing "68A Stat. 569, 570, sec. 101, 76 Stat. 72; 26 U.S.C. 4802, 4805(a);" from the parenthetical citation following the text.

33. Footnote 20 to section 12.34 is amended by removing "of 1943". Footnote 21 to section 12.34 is amended by removing the first two paragraphs.

34. Section 12.35 is removed and marked "[Reserved]" and footnote 22 thereto is removed and marked "[Reserved]".

35. Footnote 23 to section 12.36 is amended by removing "of 1943".

36. Footnote 24 to section 12.37 is amended by adding the symbol "* * * * *" above the text beginning with "(a)" and deleting the same symbol between paragraph (a) and the item headed "(1)".

37. Section 12.38 is amended by inserting "shipments" in place of "packages" in the heading and the text.

38. The first paragraph of footnote 25 to section 12.38 is revised to read as follows:

[25] "Whoever knowingly ships into any place within the United States any package containing any spirituous, vinous, malted, or other fermented liquor, or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, unless such shipment is accompanied by copy of a bill of lading, or other document showing the name of the consignee, the nature of its contents, and the quantity contained therein, shall be fined not more than $1,000 or imprisoned not more than one year, or both." (18 U.S.C. 1263)

39. Section 12.40(f) is amended by adding "unlawful" before "abortion".

40. Footnote 31 to section 12.48 is amended by removing the letter "s" from "obligations".

41. Footnote 32 to section 12.48 is revised to read as follows:

[32] "Notwithstanding any other provision of this chapter, the following are permitted:

"(1) The printing, publishing, or importation, or the making or importation of the necessary plates of such printing or publishing, of illustrations of—

"(A) Postage stamps of the United States,

"(B) Revenue stamps of the United States,

"(C) Any other obligation or other security of the United States, and

"(D) Postage stamps, revenue stamps, notes, bonds and any other obligation or other security of any foreign government, bank, or corporation, for philatelic, numismatic, educational, historical, or newsworthy purposes in articles, books, journals, newspapers, or albums (but not for advertising purposes, except illustrations of stamps and paper money in philatelic or numismatic advertising of legitimate numismatists and dealers in stamps or publishers of or dealers in philatelic or numismatic articles, books, journals, newspapers or albums). Illustrations permitted by the foregoing provisions of this section shall be made in accordance with the following conditions—

"(i) All illustrations shall be in black and white, except that illustrations of postage stamps issued by the United States or by any foreign government may be in color;

"(ii) All illustrations (including illustrations of uncanceled postage stamps in color) shall be of a size less than three-fourths or more than one and one-half, in linear dimension, of each part of any matter so illustrated which is covered by subparagraph (A), (B), (C), or (D) of this paragraph, except that black and white illustrations of postage and revenue stamps issued by the United States or by any foreign govenment and colored illustrations of canceled postage stamps issued by the United States may be in the exact linear dimension in which the stamps were issued; and

"(iii) The negatives and plates used in making the illustrations shall be destroyed after their final use in accordance with this section.

"(2) The making or importation, but not for advertising purposes except philatelic advertising, of motion-picture films, microfilms, or slides, for projection upon a screen or for use in telecasting, of postage and revenue stamps and other obligations and securities of the United States, and postage and revenue stamps, notes, bonds, and other obligations or securities of any foreign government, bank, or corporation. No prints or other reproductins shall be made from such films or slides, except for the purposes of paragraph (1), without the permission of the Secretary of the Treasury.

"For the purposes of this section tne term "postage stamp" includes postage meter stamps." (18 U.S.C. 504).

42. Section 12.73(b) is amended in the following manner:

a. In subparagraph (vi), "85.1502" is inserted in place of "85.201";

b. In subparagraph (ix), "85.1503" is inserted in place of "85.202";

c. In subparagraph (x), "85.1504" is inserted in place of "85.203";

d. In subparagraph (xi), "85.1505" is inserted in place of "85.204".

43. Section 12.91(a) and the heading are amended by inserting "Department of Health and Human Services" in place of "Department of Health, Education, and Welfare", and "21 CFR, Part 1005" in place of "42 CFR, Part 78".

44. Section 12.91(b)(2) is amended by inserting "Health and Human Services" in place of "Health, Education, and Welfare", and "21 CFR 1005.21" in place of "42 CFR 78.607".

45. Section 12.91(c) is amended by inserting "Health and Human Services" in place of "Health, Education, and Welfare", and "21 CFR 1005.10" in place of "42 CFR 78.604".

46. Section 12.91(d) is amended by inserting "Health and Human Services" in place of "Health, Education, and Welfare", and "21 CFR 1005.23" in place of "42 CFR 78.604".

47. Section 12.105(a) is amended by adding "Belize," immediately before "Bolivia," and by removing "British Honduras,".

48. Section 12.107(b) is amended by inserting "June 1, 1973" in place of "(the effective date of this regulation)".

49. Section 12.109(b) is amended by inserting a comma in place of the colon after "Public Law 92-587" and adding "19 U.S.C. 2093)b):" immediately after the comma.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

Section 18.1(b) is amended by inserting "appropriate area director" in place of "district director at New York" and "district director", wherever they appear.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

Section 19.4(e) is amended by inserting "section 161.1" in place of "section 23.35".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 22—DRAWBACK

Section 22.29(f) is revised to read as follows:

22.29 Entry and completion thereof.

* * * * * * *

(f) District directors may issue, in memorandum form, extracts from bills of lading filed with drawback entries.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

Section 24.16(b) is amended by revising footnote 5 to read as follows:

[5] See section 101.6(a) of this chapter.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 101—GENERAL PROVISIONS

Section 101.6(a)(7) is amended by substituting "The eleventh day of November." for "The fourth Monday of October."

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. Sections 123.4(d) and 123.61 are amended by inserting "Customs Form 7533" in place of "Customs Form 7533-A".

2. Sections 123.22(c) (1), (2), and (4), and section 123.51(d) and (e), are amended by inserting "Customs Form 7512-B or 7533-C" in place of "Customs Form 7533-B"

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 146—FOREIGN-TRADE ZONES

1. The heading to section 146.12(a) is amended by inserting "Customs Form 214" in place of "zone Form D" and the section is amended by inserting "Customs Form 214, and approval of the permit application." in place of "zone Form D, Application to Admit Merchandise into Foreign-Trade Zone, and the issuance of a permit by the district director".

2. Sections 146.12(b)(2); 146.14(b) and (d); 146.22(b) and (c); 146.25(b), (c) (1), (2), and (d); and, 146.47(d)(1) are amended by inserting "Customs Form 214" in place of "zone Form D".

3. Section 146.21(b) is amended by inserting "Customs Form 214" in place of "zone Form B at the time of filing the application on zone Form D (see section 146.12)".

4. Sections 146.21(c)(1) and (c)(3)(i), 146.42(b)(1), 146.42(c)(1), 146.45 (b)(2), (c)(2), (c)(5), and (d) are amended by inserting "Customs Form 214" in place of "zone Form B" and/or "Form B" wherever it appears.

5. Sections 146.42(c)(1), 146.47(b), (c), (d)(2), and (e), are amended by inserting "Customs Form 215" in place of "zone Form C" and/or "Form C" wherever it appears.

6. Sections 146.32(a) and 146.33(a) are amended by inserting "Customs Form 216" in place of "zone Form E".

7. Section 146.46(b)(1)(ii) is amended by inserting "in a letter of application for a certificate of identification containing information sufficient to properly identify the merchandise, including the zone lot number, number of packages, description, quantity, measurement, value, and zone status of the merchandise" in place of "certificate on zone Form F covering identification, as shown by Customs records, of the privileged merchandise".

8. Section 146.48(d) is amended by inserting "in accordance with the procedure set forth in section 146.46(b)(1)(ii) of this part" in place of "on zone Form F".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 147—TRADE FAIRS

Section 147.1 is amended by removing the parenthetical sentence at the end of paragraph (b).

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. Section 148.77(b)(2) is revised to read as follows:

148.77 Entry of effects on termination of assignment to extended duty, or on evacuation.

(b) *Declaration and Entry*

* * * * * * *

(2) *Designated official.* Customs Form 3299 or Department of Defense Form 1252 executed on behalf of the owner of unaccompanied personal and household effects by either a United States Dispatch Agent or a designated responsible military official in his own name, may be accepted by the Customs officer as the declaration and entry if there is a valid reason evident from the owner's travel orders or information at hand why the United States Government agency concerned is unable to present Department of Defense Form (DD) 1252 or Customs Form 3299 executed by the owner. The date of the owner's last departure from the United States need not be indicated on the form. The following statement shall be added across the face or to the back of Customs Form 3299 or Department of Defense Form 1252.

This form is completed on behalf of _____
(name of government employee)

Travel orders and information on hand in this office show that the named person has met all requirements of section 148.74, Customs Regulations, and is entitled to the benefits of item 817.00, Tariff Schedules of the United States. The shipment imported consists of nothing but personal and household effects of the named person, which effects are not imported for sale or as an accommodation for others.

2. Section 148.86 is amended by removing the period at the end of the section heading and adding "and public international organizations." Section 148.86 is further amended by removing the comma between "governments," and "may" and by inserting in its place "or of personnel of public international organizations,".

3. Section 148.89 is amended by removing the period at the end of the section heading and adding "and foreign governments.", and by inserting "or of foreign governments" between "148.87" and "shall" in paragraph (a).

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 161—GENERAL ENFORCEMENT PROVISIONS

Section 161.2(b) is amended by removing "31 U.S.C. 443," in the parenthetical at the end of the section.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

U.S. Customs Service

General Notice

19 CFR Part 177

(067766)

Television Camera Lens System; Change of Practice Considered

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed change of practice.

SUMMARY: This document gives notice that the Customs Service is reviewing the current established and uniform practice of classifying a certain television camera lens system as parts of television cameras. Customs is considering classifying that merchandise as other (optical) appliances and instruments because of a decision of the Customs Court, and seeks public comment on the proposed change of practice.

DATE: Comments (preferably in triplicate) must be received on or before Sept. 13, 1982.

ADDRESS: comments should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Simon L. Cain, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5727).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to an established and uniform practice, based on importations, the Customs Service ("Customs") has classified a television camera lens system comprised of a number of optical, electrical, and mechanical components, as parts of television cameras, under item 685.10, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202).

However, in *Rank Precision Industries, Inc.*, v. *United States*, C.D. 4866 (July 28, 1980), the United States Customs Court (now the United States Court of International Trade) held that the Varo-

tal 30 optical-electro-mechanical television camera lens system is specifically provided for as an optical appliance or instrument under item 708.89, TSUS, at a higher rate of duty. Subsequently, the United States Court of Customs and Patent Appeals, in *Rank Precision Industries, Inc.* v. *United States,* C.A.D. 1269 (August 27, 1981), reversed the Customs Court on other grounds without disturbing the lower court's classification holding.

PROPOSED CHANGE OF PRACTICE

It is Customs position that the Customs Court's decision to classify the television camera lens system in question as an optical appliance or instrument under item 708.89, TSUS, should be followed. That decision forms the basis for Customs determination that the prior established and uniform practice of classifying such merchandise under item 685.10, TSUS, as parts of television cameras, was clearly wrong.

As proposed change of practice may affect like and similar merchandise other than that before the Court, Customs seeks public comment as to the advisability of a change in the classification of such merchandise in accordance with the Court's decision, as explained above.

AUTHORITY

Inasmuch as the proposed change of practice, if implemented, will increase the amount of duties assessed on the merchandise, Customs is giving this notice and opportunity for comment as provided by section 315(d), Tariff Act of 1980, as amended (19 U.S.C. 1315(d)), and section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

COMMENTS

Consideration will be given to any written comments submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), during the hours 9:00 a.m. to 4:30 p.m. on normal business days, at the Regulations Control Branch, Headquarters, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this document was Todd J. Schneider, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

378-296 0 - 82 - 4

Approved: July 21, 1982.
JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.
Approved: July 28, 1982.
DAVID E. PICKFORD.

[Published in the Federal Register, August 13, 1982 (47 FR 35234)]

(069794)

Receipt of Domestic Interested Party Petition Concerning Classification of Certain Plywood

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of domestic interested party petition.

SUMMARY: The Customs Service has received a petition from a trade association representing American manufacturers of soft plywood. The petitioner contends that certain imported plywood classified as "building boards" should be classified as soft plywood, subject to a higher rate of duty. This document invites comments with regard to the correctness of the classification.

DATES: Interested parties may comment on this petition, and comments (preferably in triplicate) must be received on or before October 12, 1982.

ADDRESS: Comments may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

J. G. Hurley, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

BACKGROUND

A petition has been filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), by the American Plywood Association, a trade association which represents American manufacturers of soft plywood. The petitioner contends that certain Canadian plywood that has been processed, including tongue and grooved panels or shiplapped panels, which has been classified by Customs under the provision for building boards not specially provided for, in item 245.80, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), should be classified under the provision for soft plywood in item 240.21, TSUS, which, it alleges, is a more specific provision. The duty on soft plywood is higher than the duty on building boards.

COMMENTS

Pursuant to section 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments on this petition from interested parties.

The domestic interested party petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. to 4:30 p.m. on normal business days, at the Regulations Control Branch, Headquarters, U.S. Customs Service, Room 2426, 1301 Constitution Avenue NW., Washington, D.C. 20229.

AUTHORITY

This notice is published in accordance with section 175.21(a), Customs Regulations (19 CFR 175.21(a)).

DRAFTING INFORMATION

The principal author of this document was Jesse V. Vitello, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: June 4, 1982.

JOHN P. SIMPSON,
Director, Office of Regulations and Rulings.

[Published in the Federal Register, August 13, 1982 (47 FR 35391)]

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the U.S. Customs Service is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Customs Service Decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the U.S. Customs Service. Individuals to whom any of these decisions would be of interest should read the limitations expressed in 19 CFR 177.9(c).

A copy of any decision included in this listing, identified by its date and file number, may be obtained through use of the microfiche facilities in Customs reading rooms or if not available through those reading rooms, then it may be obtained upon written request to the Office of Regulations and Rulings, Attention: Legal Retrieval and Dissemination Branch, Room 2404, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. Copies obtained from the Legal Retrieval and Dissemination Branch will be made available at a cost to the requester of $0.10 per page. However, the Customs Service will waive this charge if the total number of pages copied is 10 or less.

The microfiche referred to above contains rulings/decisions published or listed in the CUSTOMS BULLETIN, many rulings predating the establishment of the microfiche system, and other rulings/decisions issued by the Office of Regulations and Rulings. This microfiche is available at a cost of $0.15 per sheet of fiche. In addition, a keyword index fiche is available at the same cost ($0.15) per sheet of fiche.

It is anticipated that additions to both sets of microfiche will be made quarterly. Requests for subscriptions for the microfiche should be directed to the Legal Retrieval and Dissemination Branch. Subcribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: August 10, 1982.

B. JAMES FRITZ,
Director, Regulations Control and Disclosure, Law Division.

Date	File No.	Issue
07-20-82	105435	Vessels: Diversion of overcarried cargo (46 U.S.C. 883)
07-21-82	105648	Vessels: Application of the coastwise laws governing the use of a foreign-flag vessel used to transport cable to be laid across Lake Erie
07-12-82	105666	Vessels: Use of a foreign-flag vessel in cable-laying operations is not coastwise trade. International cable laid under U.S. territorial waters is considered an instrument of international traffic (46 U.S.C. 883, 19 U.S.C. 1322(a))
07-19-82	105674	Vessels: Remission of certain vessel repair duties assessed pursuant to 19 U.S.C. 1466 on repairs made to an American-flag vessel in a foreign shipyard
07-19-82	105685	Vessels: Remission of duty, pursuant to 19 U.S.C. 1466(d)(3), on the installation of certain timbers used for support of the vessel deck underpinning
07-08-82	105692	Vessels: Floating drydocks are not merchandise for purposes of 46 U.S.C. 883 when placed in water on the high seas to be towed to the United States
07-14-82	105713	Vessels: A cruise will constitute coastwise trade if a vessel calls at four U.S. ports and three nearby foreign ports and allows passengers ashore at a U.S. port other than the port of embarkation or ultimate debarkation
07-12-82	105714	Vessels: A violation of 46 U.S.C. 883 occurs if merchandise laden at a U.S. port for foreign destination is not unladen at the foreign port due to a strike and is returned to a second U.S. port.
07-23-82	105721	Vessels: Movement of merchandise from points within the continental United States to points in Alaska, accompanied in part by rail transport in Canada and in part by the service of a non-coastwise qualified vessel will qualify for the third proviso exemption to 46 U.S.C. 883.

United States Court of International Trade

Decisions of the United States Court of International Trade

(Slip Op. 82-60)

JULIAN R. WOODRUM, DENNIS DORSEY AND SHERMAN JOHNSON, PLAINTIFFS *v.* RAYMOND J. DONOVAN, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, DEFENDANT

Court No. 80-12-00105

Before RE, *Chief Judge.*

On Plaintiffs' Motion for Review of Administrative Determination Upon Agency Record

Final determination by the Secretary of Labor that employees of a new car dealership are not eligible for trade adjustment assistance benefits remanded for further administrative proceedings because the Secretary failed to comply with the procedural requirements of the Trade Act of 1974.

TRADE ADJUSTMENT ASSISTANCE—ADMINISTRATIVE PROCEDURE

The Trade Act of 1974 requires the Secretary of Labor to conduct an investigation of each properly filed petition for certification of eligibility for trade adjustment assistance benefits; to publish notice that each petition has been received and an investigation initiated; and to publish a notice and summary of the final determination on each petition. Trade Act of 1974 §§ 221(a), 223(c), 19 U.S.C. §§ 2271(a), 2273(c) (1976).

TRADE ADJUSTMENT ASSISTANCE—SERVICE WORKERS

Administrative determination that petitioners are service workers must be supported by facts demonstrating the nature of the work performed by the petitioners. *Fortin* v. *Marshall,* 608 F.2d 525 (1st Cir. 1979); *Pemberton* v. *Marshall,* 639 F.2d 798 (D.C. Cir. 1981).

STATUTORY INTERPRETATION—MANDATORY PROCEDURAL PROVISIONS

Administrative procedures prescribed by statute are mandatory if intended to protect important rights possessed by individuals. *French* v. *Edwards,* 80 U.S. (13 Wall.) 506 (1872). *Cf. American Farm Lines* v. *Black Ball Freight Services,* 397 U.S. 532 (1970).

ADMINISTRATIVE LAW—PROCEDURAL ERROR

Agency action taken without observance of procedure required by law will be set aside if the errors complained of were prejudicial to the party seeking to have the action declared invalid. Administrative Procedure Act § 706(2)(D), 5 U.S.C. § 706(2)(D) (1976); *John V. Carr & Son, Inc.* v. *United States,* 69 Cust. Ct. 78, C.D. 4377, 347 F. Supp. 1390 (1972), *aff'd* 61 CCPA 52, C.A.D. 1118, 496 F.2d 1225 (1974).

[Remanded for further administrative proceedings]

(Dated July 26, 1982)

Robert S. Baker, Appalachian Research and Defense Funds, Inc., for plaintiffs.
J. Paul McGrath, Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch; *Sheila N. Ziff,* for defendant.

RE, *Chief Judge:* In this action, plaintiffs, on behalf of the former employees of a new car dealership, seek review of a final determination by the Secretary of Labor that they are not eligible for trade adjustment assistance benefits under subchapter II, Part 2 of

the Trade Act of 1974, 19 U.S.C. §§ 2271–2321 (1976). The court, after reviewing the administrative record and the arguments of the parties, has concluded that the Secretary of Labor failed to comply with the procedural requirements of the statute and that these procedural irregularities prejudiced the rights of plaintiffs. Accordingly, the court remands the matter to the Secretary for further administrative proceedings which are to be conducted in conformity with statutory requirements.

The Trade Act of 1974 was intended to strengthen economic relations between the United States and foreign countries through open and nondiscriminatory world trade. Trade Act of 1974 § 2(1), 19 U.S.C. § 2102(1) (1976). In enacting this legislation, Congress was fully aware that increased imports could result in the economic dislocation of portions of the American labor force. Consequently, the Act also provides "procedures to safeguard American industry and labor against unfair or injurious import competition, and to assist . . . workers . . . to adjust to changes in international trade flows." *Id.*, at § 2(4), 19 U.S.C. § 2102(4).

The safeguards for workers took the form of a trade adjustment assistance program which provides dislocated workers with a variety of benefits including unemployment compensation, job placement and retraining services, and job search and relocation allowances. *Id.*, at §§ 232–33, 235–38, 19 U.S.C. §§ 2292–93, 2295–98. Before any workers may enjoy these benefits, however, a group of workers, or their union or authorized representative, must file with the Secretary of Labor a petition requesting certification of eligibility for benefits. The statute directs that, upon receipt of a petition, the Secretary shall publish in the Federal Register notice that he has received a petition and initiated an investigation. *Id.*, at § 221(a), 19 U.S.C. § 2271(a). Interested persons may, within ten days of the publication of this notice, request a public hearing on the petition. *Id.*, at § 221(b), 19 U.S.C. § 2271(b).

The Secretary is required to certify petitioning workers as eligible for assistance if, in accordance with section 222 of the Trade Act, 19 U.S.C. § 2272, it is determined:

> (1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,
>
> (2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and
>
> (3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

* * * * * * *

Failure to satisfy any one of these criteria will result in a denial of certification by the Secretary of Labor.

When the Secretary makes a final determination either granting or denying certification, notice of that decision, together with a summary of its underlying rationale is to be published in the Federal Register. *Id.*, at § 223(c), 19 U.S.C. § 2273(c). This final determination is reviewable in the Court of International Trade. *Id.*, at § 284, 19 U.S.C. § 2395 (Supp IV 1980).

On August 22, 1980, the plaintiffs in this action filed with the Labor Department's Office of Trade Adjustment Assistance (OTAA) a petition for certification of eligibility for trade adjustment assistance benefits on behalf of the former employees of Capital Chrysler Plymouth of Montgomery, Inc. of Montgomery, West Virginia. The petition consisted of a single page form, supplied by the Department of Labor, on which the plaintiffs stated their names, addresses, former place of employment, the name and address of an official of the defunct auto dealership, the dates on which their employment terminated, and an allegation that the loss of their jobs was due to an increase in the number of imported cars sold in the United States.

Without publishing notice of the receipt of the petition, and without conducting an investigation, OTAA returned plaintiffs' petition, advising plaintiffs by letter that they were service workers employed by a firm that did not produce an article within the purview of section 222 of the Trade Act. OTAA concluded, therefore, that plaintiffs were not eligible for trade adjustment assistance benefits.

By letter dated September 26, 1980, plaintiffs requested administrative reconsideration of the Secretary's negative determination. Plaintiffs asserted that their employer was involved in the production of automobiles, the import-impacted article, and that they were entitled to receive the same benefits as other auto production workers.

After reexamining plaintiffs' petition, OTAA affirmed its original negative determination. OTAA explained that its determination was based on a finding that Capital Chrysler Plymouth of Montgomery was an independently owned automobile dealership, operating under a franchise agreement. OTAA also advised plaintiffs that this decision constituted the Secretary of Labor's final determination. Notice of this final determination was not published in the Federal Register.

On November 3, 1980, plaintiffs commenced this action seeking judicial review of the Secretary's final determination.[1] They ask the court to set aside the Secretary's determination for three reasons. First, they contend that the Secretary of Labor misconstrued

[1] Plaintiffs filed their petition for review in the United States Court of Appeals for the Fourth Circuit. However, as of November 1, 1980, jurisdiction over these actions was transferred to the United States Court of International Trade. In accordance with law, the Fourth Circuit Court of Appeals transferred the action to this court. *See* Customs Courts Act of 1980, Pub. L. No. 96-417, 94 Stat. 1727.

section 222(3) of the Trade Act by narrowly interpreting the word "produced". Second, plaintiffs submit that the Secretary's interpretation of section 222(3), as a practical matter, has resulted in the dissimilar treatment of similarly situated workers.

Finally, plaintiffs allege that the Secretary failed to follow the procedural dictates of the Act. Because the court has concluded that procedural irregularities at the administrative level have prejudiced the rights of plaintiffs in this action, it will not, at this time, consider plaintiffs' first two claims.

The procedural errors which plaintiffs allege have infringed their rights are: the Secretary of Labor's failure to investigate their petition; the Secretary's failure to publish in the Federal Register notice that he had received plaintiffs' petition and initiated an investigation; and the Secretary's failure to publish in the Federal Register a notice and summary of his final determination concerning plaintiffs' eligibility for benefits.

Defendant admits that no investigation was conducted and that no notices were published in the Federal Register but nevertheless urges the court to affirm the Secretary's final determination. It submits that the determination should be upheld because, either, it was within the discretion of the Secretary to modify the procedural directives of the statute in this case, or, even if it was error to take certain "procedural shortcuts," these lapses constituted harmless error.

Central to defendant's argument is its contention that the Secretary was able to determine from the contents of plaintiffs' petition that they were ineligible for benefits. Hence, defendant argues, an investigation or hearing would have been a futile exercise because neither would have altered the Secretary's ultimate decision. Plaintiffs, on the other hand, contend that because the Secretary did not conduct an investigation or permit them to give testimony or submit evidence there was insufficient information upon which to base a reasonable conclusion.

Defendant's assertion that it is within the discretion of the Secretary to modify the procedural directives of the statute on a case-by-case basis presents two questions. The first is whether the Trade Act of 1974 implicitly requires the Secretary of Labor to conduct an investigation whenever a petition for certification of eligibility for trade adjustment assistance benefits is properly filed. The second is whether the provisions of the Act which explicitly direct the Secretary to publish notice of the receipt of a petition and notice of a final determination of eligibility are mandatory or permissive.

The 1974 Trade Act's only reference to the Secretary of Labor's duty to investigate petitions is contained in section 221 which states that upon receiving a petition the Secretary "shall promptly publish notice * * * that he has received the petition and initiated an investigation." Despite the paucity of statutory language on this point, it is evident in reading the Act and its legislative history

that the Secretary of Labor was intended to assume the responsibilities which, under the Trade Expansion Act of 1962, had reposed in the United States International Trade Commission. See S. Rep. No. 93-1298, 93d Cong., 2d Sess. 132-33 (1974); H.R. Rep. No. 93-571, 93d Cong., 1st Sess. 53-54 (1973). Those responsibilities included the duty to investigate each petition filed by a group of workers. Trade Expansion Act of 1962 § 301(c)(2), Pub. L. No. 87-794, 76 Stat. 872 (repealed 1975). Nothing in the legislative history of the Trade Act of 1974 indicates that Congress intended to curtail the government's duty to investigate petitions for certification of eligibility for trade adjustment assistance benefits.

Accordingly, the court has concluded that the Secretary of Labor must conduct an investigation into each properly filed petition. The nature and extent of the investigation required in each case, however, are matters which properly rest within the sound discretion of the Secretary.

In contrast to the Act's oblique reference to the Secretary's duty to investigate, the notice provisions of the statute are quite specific. Section 221(a) of the Trade Act provides in pertinent part:

> (a) * * * Upon receipt of the petition, the Secretary *shall* promptly publish notice in the Federal Register that he has received the petition and initiated an investigation. [Emphasis added.]

Section 223(c) provides:

> (c) Upon reaching his determination on a petition, the Secretary *shall* promptly publish a summary of the determination in the Federal Register together with his reasons for making such determination. [Emphasis added.]

The word "shall", used by Congress in both of these provisions, is ordinarily the language of command. *Escoe* v. *Zerbst*, 295 U.S. 490, 493 (1935). Its use, however, does not conclusively establish that a provision is mandatory. *Id.* The Supreme Court, in *French* v. *Edwards*, 80 U.S. (13 Wall.) 506 (1872), set forth the rule to be followed when a court must decide whether the procedural directives of a statute are mandatory or permissive. Speaking for the Court, Justice Field stated:

> There are, undoubtedly, many statutory requisitions intended for the guide of officers in the conduct of business devolved upon them, which do not limit their power or render its exercise in disregard of the requisitions ineffectual. Such, generally, are regulations designed to secure order, system and dispatch in proceedings, and by a disregard of which the rights of parties interested cannot be injuriously affected.
>
> * * * But when the requisitions prescribed are intended for the protection of the citizen, and to prevent a sacrifice of his property, and by a disregard of which his rights might be and generally would be injuriously affected, they are not directory

> but mandatory. They must be followed or the acts done will be invalid.

Id., at 511. See also *Erhardt* v. *Schroeder*, 155 U.S. 124 (1894); *Stein* v. *United States*, 1 CCPA 478, T.D. 31525 (1911); *Joanna Western Mills Co.* v. *United States* (*Unitron Import Corp.*, party-in-interest), 64 Cust. Ct. 218, C.D. 3983 (1970).

Guided by this authority, the court has concluded that both notice provisions are mandatory. To disregard either would substantially impair important rights possessed by petitioners and other interested persons. Those filing a petition for certification and others whom the Secretary of Labor deems to be interested in the proceedings have ten days following the publication of a notice of receipt of a petition within which to request a public hearing at which they may be present, produce evidence, and be heard. Trade Act of 1974, § 221(b), 19 U.S.C. § 2271(b) (1976). A request for a hearing made before or after that time period may lawfully be disregarded by the Secretary, while a request made during that period must be granted. H.R. Rep., *supra*, at 118. By not publishing the required notice, the Secretary may effectively deny petitioners and other interested persons the opportunity to be heard.

Similarly, petitioners have sixty days from the date of publication of a notice of a final determination within which to seek judicial review of that determination. *Id.*, at § 284, 19 U.S.C. § 2395 (Supp. IV 1980). Hence, a legal action commenced prior to publication of a final determination could be regarded as premature, while an action instituted more than sixty days after publication is barred by this statute of limitations. *Brunelle* v. *Donovan*, 3 CIT —, Slip Op. 82-21 (March 23, 1982). *Cf. Tyler* v. *Donovan*, 3 CIT —, Slip Op. 82-17 (March 11, 1982).

In the procedural scheme contemplated by Congress, the notices which the Secretary of Labor is directed to publish give rise to and, after a time, extinguish important due process rights, i.e., the right to request an administrative hearing and the right to seek judicial review. Dispensing with the required notices jeopardizes these rights.

In *American Farm Lines* v. *Black Ball Freight Services*, 397 U.S. 532 (1970), which defendant cites in support of the notion that an agency may modify on a case by case basis the procedural requirements of an act of Congress, the Supreme Court was concerned with an agency's discretion to modify its own rules. Significantly, the Supreme Court indicated that the *ad hoc* modification of agency rules would not be tolerated where the rules were intended "to confer important procedural benefits upon individuals in the face of otherwise unfettered discretion." *Id.*, at 538. Rather, the Court approved of such modifications " 'when in a given case the ends of justice require it.' " *Id.*, at 539 (quoting *NLRB* v. *Monsanto Chemical Co.*, 205 F.2d 763, 764 (1953)). The facts of the present case indicate that the Secretary's failure to conduct an investiga-

tion or publish the required notices did not serve the ends of justice, but only the administrative convenience of the agency.

When, as in the present case, agency action is taken without observance of procedure required by law, courts are empowered to set aside that action. Administrative Procedure Act § 706(2)(D), 5 U.S.C. § 706(2)(D) (1976). Nevertheless, as defendant correctly points out, courts will not set aside agency action unless the procedural errors complained of were prejudicial to the party seeking to have the action declared invalid. *John V. Carr & Son, Inc.* v. *United States,* 69 Cust. Ct. 78, 87, C.D. 4377, 347 F. Supp. 1390 (1972), *aff'd* 61 CCPA 52, C.A.D. 1118, 496 F.2d 1225 (1974).

The Secretary of Labor's failure to publish a notice and summary of his final determination in the Federal Register did not prejudice the rights of the plaintiffs in this action. Therefore, that error would not, by itself, compel the court to set aside the Secretary's determination. This cannot be said of the Secretary's failure to conduct an investigation, and his failure to publish notice of the receipt of a petition. These procedural errors had the effect of excluding from the administrative record facts which are directly relevant to the Secretary's determination that plaintiffs are not eligible for trade adjustment benefits.

In denying their request for certification, the Secretary stated that plaintiffs were ineligible for benefits because they were "service workers" employed by a firm that did not produce an import-impacted article and that was not substantially owned or controlled by a firm that did produce such articles. In support of this conclusion, the Secretary invokes two judicial precedents, *Fortin* v. *Marshall,* 608 F.2d 525 (1st Cir. 1979), and *Pemberton* v. *Marshall,* 639 F.2d 798 (D.C. Cir. 1981), which held that service workers were not ordinarily entitled to trade adjustment assistance benefits. Additionally, the Secretary cites an administrative decision which held that employees of a new car dealership are eligible for benefits only if the dealership is substantially owned or controlled by a parent firm which manufactures automobiles, *Jim Kraut Chevrolet, Inc.,* TA-W-12835, 46 Fed. Reg. 52059 (1981).

In the *Fortin* case, the court carefully considered the use of the term "article" in the Trade Act of 1974 and concluded that services could not be regarded as an article so as to bring providers of services within the class of workers protected by the Act. Applying this interpretation of law to the facts of that case, the court held that airline employees who performed a variety of passenger, cargo, mechanical, administrative and managerial tasks were ineligible for benefits because they provided services to consumers rather than produced articles for consumers. In *Pemberton,* shipyard workers employed by Bethlehem Steel's Baltimore Yards were denied certification because an investigation by the Secretary of Labor disclosed that ninety-four percent of their work consisted of maintenance and repairs done to marine vessels owned by companies

other than Bethlehem Steel. The court, relying on *Fortin,* affirmed the Secretary's determination because the majority of the work performed by those seeking certification was in the nature of services rather than manufacture.

Supporting the holdings in both of these cases is a clear exposition of the work performed by the individuals seeking certification of eligibility for trade adjustment assistance benefits. In each case the Secretary of Labor determined that the petitioners were service workers after making a factual inquiry into the nature of the tasks performed by each group. In the present case, the Secretary did not inquire either by investigation or hearing into the facts surrounding plaintiffs' petition. The administrative record is utterly devoid of any information which might indicate whether the employees of an automobile dealership are service workers as contended by the Secretary. The administrative decision upon which the Secretary relies, *Jim Kraut Chevrolet,* is similarly devoid of facts which would show the nature of the work performed by employees of a new car dealership.

In their brief, plaintiffs assert that automobile dealership employees perform numerous production tasks such as assembling and installing certain optional equipment, and giving new cars their final pre-sale cleaning and tune-up. Plaintiffs characterize these tasks as the final steps in the production process. Additionally, there is nothing on the face of plaintiffs' petition which reveals who owned and controlled Capital Chrysler Plymouth of Montgomery, Inc.[2]

In light of these assertions, the court cannot agree that an administrative investigation or hearing would have been futile in this case. The Secretary should have taken steps to determine who owned Capital Chrysler Plymouth of Montgomery, Inc. In the absence of a judicial precedent conclusively establishing that the employees of new car dealerships are service workers, a factual inquiry should also have been conducted into the nature of the work performed by the petitioners. Furthermore, since review in this court is confined to the administrative record, these factual inquiries must be made at the administrative level. Trade Act of 1974 § 284, 19 U.S.C. § 2395 (Supp IV 1980). The Secretary's failure to conduct an investigation, and his failure to provide plaintiffs with an opportunity to request a hearing thus prejudiced plaintiffs' right to a fair consideration of their petition at the administrative level, as well as their right to meaningful judicial review.

Plainly without merit is defendant's contention that, because the Secretary's final determination is not likely to be changed by an investigation and hearing, plaintiffs were not prejudiced by the denial of their rights. A similar argument was made by the government in *Escoe* v. *Zerbst,* 295 U.S. 490 (1935), when the Supreme

[2] Jack Fointness, listed as a former official of Capital Chrysler Plymouth of Montgomery, is identified on the petition as the owner of Capital Chrysler Plymouth of *Charleston,* Inc.

Court was considering whether a probationer accused of breaking his probation had been prejudiced by being returned to prison without the hearing required by the applicable statute. Justice Cardozo responded:

> It is beside the point to argue, as the government does, that in this case a hearing, if given, is likely to be futile because the judge has made it plain how his discretion will be exercised * * *. The *non sequitur* is obvious. The judge is without the light whereby his discretion must be guided until a hearing, however summary, has been given * * *.

Id., at 494. "The essence of due process is the requirement that 'a person in jeopardy of serious loss [be given] notice of the case against him *and opportunity to meet it.*'" *Matthews* v. *Eldridge*, 424 U.S. 319, 348 (1976) (quoting Frankfurter, J. concurring in *Joint Anti-Fascist Committee* v. *McGrath*, 341 U.S. 123, 171-72 (1951)) (emphasis added).

In summary, it is the determination of the court that the Trade Act of 1974 requires the Secretary of Labor to conduct an investigation of each properly filed petition for certification of eligibility for trade adjustment assistance benefits; to publish notice that each petition has been received and an investigation initiated; and to publish a notice and summary of the final determination concerning each petition. The Secretary's failure to follow the required procedures in this case resulted in substantial prejudice to plaintiffs and, for that reason, this matter is remanded to the Secretary for further proceedings which are to be conducted in accordance with law.

The Secretary shall certify the record and report the results of the futher proceedings to the court within sixty (60) days from the date of the entry of this order.

(Slip Op. 82-61)

FARR MAN AND CO., INC., AND THE NATIONAL SUGAR REFINING COMPANY, PLAINTIFFS *v.* THE UNITED STATES, DEFENDANT

Court No. 79-10-01490

Before RE, *Chief Judge*, LANDIS and BOE, *Judges* [1]

Validity of Surcharge—Presidential Proclamation 4547

I. The exemption granted in Presidential Proclamation 4547 to sugar exported from Malawi was within the discretionary authority delegated to the President by the Congress in section 22 of the Agricultural Adjustment Act of 1933, as amended.

II. The President's exercise of the authority so delegated to him was not in violation of, and in fact superseded, the most-favored-

[1] The three-judge panel in this case was designated by the Chief Judge upon application of the parties pursuant to rule 77(d)(2) of this court.

nation provisions contained in the treaty and any international agreement between the United States and Argentina or in the General Agreement on Tariffs and Trade.

[Defendant's motion for summary judgment, granted. Plaintiffs' cross-motion for summary judgment, denied.]

(Decided July 26, 1982)

Barnes, Richardson & Colburn (Rufus E. Jarman, Jr. and *Jacqueline M. Nolan-Haley* on the briefs) for the plaintiffs.

J. Paul McGrath, Assistant Attorney General; *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, Commercial Litigation Branch *(Madeline B. Kuflik* on the briefs), for the defendant.

BOE, *Judge:* By the institution of this action contesting the duty imposed upon raw sugar imported into the United States from Argentina, the validity and/or proper application of Presidential Proclamation 4547, has been placed in issue.

No material fact relied upon by plaintiffs or defendant is in controversy in their respective motions for summary judgment. *Schoenfeld & Sons, Inc.* v. *United States,* 3 Ct. Int'l. Trade —, Slip Op. 82-33 (April 30, 1982); *Heyman* v. *Commerce and Industry Insurance Co.,* 524 F.2d 1317 (1975).

In an effort to remedy the insufficiency of import fees previously established by Proclamation No. 4538, President Carter, upon the advice and recommendation of the Secretary of Agriculture, promulgated Proclamation No. 4547 under date of January 20, 1978. In so doing, the President acted upon his belief that:

> * * * "sugars," are being, or are practically certain to be, imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or to materially interfere with the price support operations now being conducted by the Department of Agriculture for sugar cane and sugar beets, or to reduce substantially the amount of any product being processed in the United States from such domestic sugar beets and sugar cane. * * * Presidential Proclamation No. 4547, Fed. Reg., Vol. 43, No. 16.

The Proclamation provided in pertinent part:

> With the following exceptions, this proclamation applies to articles entered, or withdrawn from warehouse, for consumption after 12:01 a.m. (Eastern Standard Time) on the day following its issuance. One exception shall be for the sugars of Malawian origin which entered the United States before February 15, 1978, pursuant to contracts for delivery to the United States entered into before November 11, 1977. Further, if it is established to the satisfaction of the Commissioner of Customs that articles subject to proclamations 4538 and 4539 exported to the United States before November 11, 1977, or imported to fulfill forward contracts for delivery to the United States entered into before November 11, 1977, could have been, but were not, entered for consumption on or before January 1, 1978, as a

> result of the delay in transportation to a point within the limits of a Customs port of entry of the United States because of windstorm, fog, or similar stress of weather, the provisions of proclamations 4538 and 4539 shall not apply to the articles even though they are entered for consumption after January 1, 1978 nor shall the provisions of this proclamation be applicable to them. The proclamation shall continue to apply until I have acted on the Report of the United States International Trade Commission.

In its motion for summary judgment, defendant contends that the President's exercise of authority pursuant to section 22 of the Agriculture Adjustment Act of 1933, 48 Stat. 31, 7 U.S.C. § 624, as amended, is discretionary and therefore not subject to review by this court. This contention is without merit. *See Suwannee Steamship Company* v. *United States,* 435 F. Supp. 389, 392–393 (1977).

In assuming jurisdiction this court's review is confined to whether the President's grant of an exemption to sugar of Malawian origin has been exercised in conformity with the procedural requirements of statutory authority and whether such action of the President has been performed according to law. *Best Foods, Inc.* v. *United States,* 147 F. Supp. 749 (Cust. Ct. 1956); *Montgomery Ward & Co., Inc.* and *The United States* v. *Zenith Radio Corp.,* Slip Op. 81-44, — CCPA — (1982), (mandate of CCPA stayed until August 2, 1982, to permit plaintiff, *Zenith Radio Corp.,* to file a petition for certiorari before the United States Supreme Court).

The plaintiffs do not question the authority of the President to designate exemptions in a Presidential Proclamation. The exemption relating to shipments of sugar which were not entered for consumption before January 1, 1978, as a result of delay caused by windstorm, fog or similar stress of weather is acknowledged to be a valid and proper exercise of the discretionary authority of the President, because it applied uniformly to all exporting countries.

It appears to logically follow from the plaintiffs' recognition of the President's authority to designate exemptions that their objection to the specific exemption of sugar of Malawian origin is not premised upon the discretionary right of the President to designate such an exemption. Rather, plaintiffs' objection to the latter exemption is premised upon (1) the President's reliance upon advice from the Secretary of State in granting the Malawian exemption and (2) the existence of a treaty, trade agreement and other laws which allegedly preclude the granting of such an exemption to a single country only.

Section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. § 624), from which the President acknowledges a specific grant of authority for the promulgation of Proclamation 4547, is set forth herein:

§ 624. Limitation on imports; authority of President.

(a) Whenever the Secretary of Agriculture has reason to believe that any article or articles are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, any program or operation undertaken under this title or the Soil Conservation and Domestic Allotment Act, as amended or section 32, Public Law Numbered 320, Seventy-fourth Congress, approved August 24, 1935, as amended [7 USCS § 612c], or any loan, purchase, or other program or operation undertaken by the Department of Agriculture, or any agency operating under its direction, with respect to any agricultural commodity or product thereof, or to reduce substantially the amount of any product processed in the United States from any agricultural commodity or product thereof with respect to which any such program or operation is being undertaken, he shall so advise the President, and, if the President agrees that there is reason for such belief, the President shall cause an immediate investigation to be made by the United States Tariff Commission [United States International Trade Commission], which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties, and shall be conducted subject to such regulations as the President shall specify.

(b) If, on the basis of such investigation and report to him of findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such fees not in excess of 50 per centum ad valorem or such quantitative limitations on any article or articles which may be entered, or withdrawn from warehouse, for consumption as he finds and declares shown by such investigation to be necessary in order that the entry of such article or articles will not render or tend to render ineffective, or materially interfere with, any program or operation referred to in subsection (a) of this section, or reduce substantially the amount of any product processed in the United States from any such agricultural commodity or product thereof with respect to which any such program or operation is being undertaken: Provided, That no proclamation under this section shall impose any limitation on the total quantity of any article or articles which may be entered, or withdrawn from warehouse, for consumption which reduces such permissible total quantity to proportionately less than 50 per centum of the total quantity of such article or articles which was entered, or withdrawn from warehouse, for consumption during a representative period as determined by the President: And provided further, That in designating any article or articles, the President may describe them by physical qualities, value, use or upon such other bases as he shall determine.

In any case where the Secretary of Agriculture determines and reports to the President with regard to any article or articles that a condition exists requiring emergency treatment, the

President may take immediate action under this section without awaiting the recommendations of the Tariff Commission [International Trade Commission], such action to continue in effect pending the report and recommendations of the Tariff Commission [International Trade Commission] and action thereon by the President.

(c) The fees and limitations imposed by the President by proclamation under this section and any revocation, suspension, or modification thereof, shall become effective on such date as shall be therein specified, and such fees shall be treated for administrative purposes and for the purposes of section 32 of Public Law Numbered 320, Seventy-fourth Congress, approved August 24, 1935, as amended [7 USC § 612c], as duties imposed by the Tariff Act of 1930, but such fees shall not be considered as duties for the purpose of granting any preferential concession under any international obligation of the United States.

* * * * * * *

(e) Any decision of the President as to facts under this section shall be final.

(f) No trade agreement or other international agreement heretofore or hereafter entered into by the United States shall be applied in a manner inconsistent with the requirements of this section.

Except for certain procedural requirements, section 22 of the Agricultural Adjustment Act, as amended, grants to the President broad discretionary powers. Subsections (a) and (b) clearly indicate that upon the advice and recommendation by the Secretary of Agriculture with respect to the adverse effect of imported articles on domestic agricultural commodities the President determines whether a "reason for such belief exists." If the President causes a further investigation to be made by the International Trade Commission, he, in turn, must agree with the facts submitted in the Commission's investigative report before imposing a fee or a quantitative limitation on the imported articles. The President has been authorized to describe the imported articles in a proclamation by physical qualities, value, use, or *upon such other basis as he shall determine.* The determination of the amount of fees and limitations upon imports, their revocation, suspension or modification [2] as well as the finality given to any decision of the President as to facts made under the provisions of section 22,[3] as amended, cogently illustrate the intent of the Congress thereby to delegate the broadest discretionary authority to the President.

In the absence of a conflicting or contravening provision, this court is of the opinion that a postponement in the implementation of the provisions of Presidential Proclamation 4547 upon the exports of a country or countries because of existing unique extenuat-

[2] 7 U.S.C. § 624(c).
[3] 7 U.S.C. § 624(e).

ing circumstances beyond their control, is within the discretionary authority delegated to the President by section 624.

The plaintiffs protest the action of the President exempting sugar of Malawian origin because the information on which this exemption was based had been provided to the President by the State Department. Since section 22 of the Agricultural Adjustment Act refers only to Secretary of Agriculture and the Secretary's obligation to furnish the initial information as to imports which may interfere or threaten to interfere with domestic agricultural programs, the plaintiffs contend that the procedural requirements of the statute dictate that the President's determinations and actions be predicated only on the reports and recommendations of the Secretary of Agriculture. With this reasoning the court cannot agree. The procedural requirements with respect to the actions to be performed by the President upon the report and recommendations received from the Secretary of Agriculture are clear. The Secretary's recommendation pertains to those facts and matters which evidence a material interference with any program or operation conducted by the Department of Agriculture relating to domestic agricultural commodities. It is upon information of this character that the President will act if he is in agreement therewith. The amount of the fees which the President may impose and the time of implementation of any proclamation providing for the same are matters which lie solely within the discretion of the President. Where foreign policy and the intricacies of foreign affairs impinge upon the implementation of a domestic agricultural commodities program, it can only be expected that the President's principal foreign policy adviser, the Secretary of State, should make a report and inform him with respect to factors related thereto. It would be naive to believe that a determination made by the President within his discretionary authority must emanate only from his own mind unaffected by any counsel, advice or report he may have received relating to the multitude of problems and situations confronting him daily.

The scope of the Agricultural Adjustment Act encompasses not only domestic economic matters of national interest and import but also matters of foreign policy related thereto. The discretionary authority delegated to the President in section 22 of the Act often involves his representative role in the arena of foreign affairs. The decision in *South Puerto Rico Sugar Company Trading Corp.* v. *United States,* 167 Ct. Cl. 236, 334 F. 2d 622, 630–31 (1964), *cert. denied,* 379 U.S. 964 (1965), construing an amendment to the Sugar Act of 1948, recognizes the "coloration" which foreign affairs normally can be expected to impart to a discretionary authority contained in statutes such as in issue herein.

> But a statute giving any substantial discretion with respect to the importation of a critical commodity like sugar from competing foreign countries can normally be expected to involve foreign policy in applying that discretion. In the intercourse of

> nations, changes in economic relationships have many an important political corollary. It would be difficult, and probably unwise, to separate an executive choice in that area from the 'important, complicated, delicate and manifold problems' facing the President in the 'vast external realm' (United States v. Curtiss-Wright Corp., 299 U.S. 304, 319, 57 S. Ct. 216, 220 (1936)). It is for this reason, we judge, that Congress granted power in the Act of July 6th to the President himself, not to the Secretary of Agriculture whose usual duty it was to apply the quota mandates of the Sugar Act of 1948. Within the limited sphere of discretion left to him, the President, with the advice of the State Department as well as of the Agriculture Department, could appraise and balance both foreign and domestic elements.

The decision continues:

> The presence of foreign factors adds still more to the range of the powers transmitted by the phrase because, as the Supreme Court has explicitly recognized, a delegation of unusually extensive discretion to the President is not uncommon in the external realm. "Practically every volume of the United States Statutes contains one or more acts or joint resolutions of Congress authorizing action by the President in respect of subjects affecting foreign relations, which either leave the exercise of the power to his unrestricted judgment, or provide a standard far more general than that which has always been considered requisite with regard to domestic affairs."

See also Youngstown Sheet & Tube Co., et al. v. *Sawyer,* 343 U.S. 579 (1952); *United States* v. *Curtiss-Wright Corp.,* 299 U.S. 304 (1936).

In the instant action a prior protective order of the court has placed a cloak of confidentiality around certain documents produced by the defendant upon the demand of the plaintiffs. An examination of the same *in camera* discloses that the President in granting the Malawian exemption has exercised a discretionary judgment as to facts which he, with the aid of special advisers, has evaluated in the light of complicated and delicate political conditions existing at the time.

Plaintiffs further contend that the exemption granted to sugar of Malawian origin contravenes prior treaty and statutory obligations of the United States. Although in their prayer for relief contained in the complaint, plaintiffs seek a judgment declaring the exemption in Presidential Proclamation 4547 relating to sugar of Malawian origin to be void or voidable, it would appear that such relief is inconsistent with the gravamen of plaintiffs' arguments presented to the court. Plaintiffs' cross-motion for summary judgment is predicated upon the contention that by the exemption of sugar of Malawian origin, Presidential Proclamation 4547 violated the most-favored-nation provision and treatment specifically provided for in the treaty of 1853 between the United States and Ar-

gentina, the trade agreement between the respective countries entered into under date of October 14, 1941, and the General Agreement on Tariffs and Trade (GATT) (codified at 19 U.S.C. § 1881). Accordingly, plaintiffs urge, the importation of Argentina sugar is entitled to similar treatment. It is difficult to reconcile plaintiffs' request for treatment similar to the Malawian exemption with its request for judgment declaring that very exemption void.

Despite the apparent inconsistencies in the grounds for relief urged by the plaintiffs, the court directs its attention to plaintiffs' argument that the Malawian exemption contravenes prior United States international agreements.

Article VI of the Constitution of the United States provides in pertinent part:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; * * *

Article III of the treaty between the United States and Argentina entered into in the year 1853 upon which plaintiffs rely provides:

> The two high-contracting parties agree that any favor, exemption, privilege, or immunity whatever, in matters of commerce or navigation, which either of them has actually granted, or may hereafter grant, to the citizens or subjects of any other government, nation, or State, shall extend, in identity of cases and circumstances to the citizens of the other contracting party, gratuitously, if the concession in favor of that other government, nation, or State, shall have been gratuitous; or, in return for an equivalent compensation, if the concession shall have been conditional. 10 Stat. 1005, 1006–1007.

The provision contained in the trade agreement between the United States and Argentina of October 14, 1941, is illustrative of the most-favored-nation provision generally contained in such agreements between the United States and other nations:

> The United States of America and the Argentine Republic will grant each other unconditional and unrestricted most-favored-nation treatment in all matters concerning customs duties and subsidiary charges of every kind and in the method of levying duties, and, further, in all matters concerning the rules, formalities and charges imposed in connection with the clearing of goods through the customs, and with respect to all laws or regulations affecting the sale or use of imported goods within the country.
>
> Accordingly, articles the growth, produce or manufacture of either country imported into the other shall in no case be subject, in regard to the matters referred to above, to any duties, taxes or charges other or higher, or to any rules or formalities other or more burdensome, than those to which the like arti-

> cles the growth, produce or manufacture of any third country are or may hereafter be subject. 56 Stat. 1687–1688.

The court examines plaintiffs' basic contention that the exemption granted to sugar of Malawian origin by Presidential Proclamation 4547 violated the most-favored-nation provision contained in the treaty of 1853 and the trade agreement of 1941 between the United States and Argentina.

It is a well established doctrine that where a conflict exists between the provisions of a treaty and a statute enacted by Congress, the one which is the latest in time of enactment shall prevail. In *Whitney* v. *Robertson*, 124 U.S. 190, 193 (1888), the United States Supreme Court has clearly enunciated this doctrine:

> By the Constitution a Treaty is placed on the same footing, and made of like obligation with an Act of legislation. Both are declared by that instrument to be the supreme law of the land, and no superior efficacy is given to either over the other. When the two relate to the same subject, the courts will always endeavor to construe them so as to give effect to both, if that can be done without violating the language of either; but if the two are inconsistent, the one last in date will control the other, provided always the stipulation of the Treaty on the subject is self executing. If the country with which the Treaty is made is dissatisfied with the action of the legislative department, it may present its complaint to the executive head of the government, and take such other measures as it may deem essential for the protection of its interests. The courts can afford no redress. Whether the complaining Nation has just cause of complaint, or our country was justified in its legislation, are not matters for judicial cognizance.

See also Reid v. *Covert*, 354 U.S. 1, 18 (1957); *Andrew Akins* v. *United States*, 64 CCPA 68, 551 F.2d 1222 (1977); *Minerva Automobiles, Inc.* v. *United States*, 25 CCPA 324 (1938).

In the consideration, therefore, of section 22 in connection with the instant action, the basic issue is presented: do the provisions of that section, as amended, prevail over the existing treaty and trade agreements between the United States and Argentina? Legislative history with respect thereto is revealing.

The Congress in the enactment of the Agricultural Adjustment Act has recognized that the national interest requires that orderly marketing conditions for domestic agricultural commodities be maintained in order to protect producers and consumers and to provide an orderly flow of supply to the market, thereby avoiding unreasonably fluctuation in supplies and prices.[4] The successive amendments to section 22 of the Act evidence an intent on the part of Congress to cause the provisions thereof to prevail over any treaty and trade obligation which might be in conflict therewith.

[4] 7 U.S.C. § 601.602.

On July 3, 1948, subsection (c) of section 22 was amended to provide:

> [b]ut such fees [imposed by the President by means of a proclamation] shall not be considered as duties for the purpose of granting any preferential concession under any international obligation of the United States.

The legislative history relating to this amendment establishes the purpose for the inclusion of this language. The term, "fees," was used in order to provide a justification for continuing the preferential treatment which had for a long period of time been extended to sugar exported from Cuba. H. R. Rep. No. 1776, 80th Cong., 2d Sess. (April 21, 1948).[5]

The foregoing amendment marks a demonstrative effort on the part of Congress to continue to provide preferential treatment for certain imports, despite the recognition of the most-favored-nation provisions included in our international treaties. As further indicated by the legislative history, *supra*, the deletion of the term "duties," and the substitution of the term "fees," was deemed necessary because the express language which *then* remained in subsection (f) of section 22 prohibited the enforcement of a proclamation in contravention of any treaty or trade agreement to which the United States is a party.

The desire and the ultimate design of Congress to circumscribe the most-favored-nation treatment provided for in treaties and the international agreements which might conflict with section 22 became increasingly evident upon the enactment of the amendment to subsection (f) on June 28, 1950. This amendment provided that future international agreements or amendments to existing agreements must "give effect" to section 22 within the framework of the General Agreement on Tariffs and Trade.

The steadily increasing sentiment for the full protection of domestic agricultural commodities from price depression and fluctuations caused by foreign imports culminated in the enactment of the amendment to subsection (f) of section 22 under date of June 16, 1951. Subsection (f), as amended, provides:

> No trade agreement or other international agreement heretofore or hereafter entered into by the United States shall be applied in a manner inconsistent with the requirements of this section.

Any ambiguity with respect to the intent of the Congress in the enactment of the foregoing amendment to subsection (f) is dispelled by a review of the extensive legislative history relating thereto.[6]

Statements by the members of the Senate Finance Committee in explaining the present subsection (f) at the time of its consideration and enactment by the Senate body present a clear picture of the

[5] Reprinted in [1948] U.S. Code Cong. & Ad. News 2320, 2325.
[6] *United States* v. *J. E. Bernard & Co., Inc.*, 42 CCPA 69, CAD 573 (——)

temper and legislative disposition of Congress. Senator Butler in explaining the purport of the amendment to subsection (f) stated:

> Thus, our Government with one hand through the Commodity Credit Corporation was trying to hold up the price of domestic farm products; with the other hand, through the trade-agreements program, it was helping to knock them down.
>
> Whenever any attempt was made to correct this situation through section 22 of the Agricultural Adjustment Act, we were told that no quota or additional import fee could be imposed on such imports by the Secretary of Agriculture, because we had entered into trade agreements which prohibited us from protecting our domestic farm prices.
>
> This bill attempts to correct that situation. It states flatly that no trade agreement shall be applied in a manner inconsistent with section 22 of the Agricultural Adjustment Act. I do not think there can be any misunderstanding about the meaning of this provision. By this section, Congress is serving clear notice that it wants our domestic agricultural price structure to be protected. 97 Cong. Rec. 5669, 82d Cong., 1st Sess. (May 23, 1951).

In responding to the inquiry of Senator Morse as to why the committee was not disposed to strike from the proposed amendment to subsection (f) the words "with the requirements," Senate Finance Committee member Millikin explained:

> In my opinion, the language was put into the bill deliberately to strengthen rather than to weaken that section. It is intended to make it clear that our domestic programs under section 22 shall prevail and shall override anything inconsistent found in international agreements. That is the purpose of the language, to make it very clear that the requirements or the provisions of section 22, shall prevail and shall override all other inconsistent things to be found in international agreements. *Id.* at 5730.

Senator George, Chairman of the Committee, in summarizing the purpose, intent and effect of the amendment of subsection (f) to section 22 stated:

> Mr. President, I was discussing section 22, and I will restate a part of what I said because it is most important. Subsection (f) of section 22 contains certain limitations upon the full scope of its use by reason of the provisions of our trade agreements. That is, that was the way the matter stood before the amendment was recommended by the committee. The amendment recommended by the committee reverses this situation, and provides that if a case should arise where required action under section 22 would conflict with any trade agreement, then the action under section 22 shall prevail. The committee, of course, assumes that where a choice of remedies under sec-

> tion 22 makes it possible, the President will probably choose a course not incompatible with our foreign commitments. *Id.* at 5492.

With respect to the phraseology "the requirements of," contained in subsection (f), the Senator concluded:

> I should like to add that the purpose of inserting this language is that if the President, when certain facts appear, can give an effective remedy without violating an agreement, but within the terms of an agreement, so to speak, he may have that opportunity; but if he cannot, this section will prevail. This section carries out the philosophy of the distinguished Senator from Washington in the two bills which have previously passed the Senate. *Id.* at 5722.

This court is fully satisfied that the amendments to section 22, as well as their legislative history, clearly evidence the intent of Congress that the powers delegated to the President therein be neither diminished nor contravened by the provisions of any treaty or trade agreement between the United States and Argentina or the provisions of the General Agreement on Tariffs and Trade. The amendments to subsections (c) and (f) of section 22 were enacted subsequent to the treaty and the trade agreements between the United States and Argentina, and therefore prevail in matters concerning which a conflict might exist. *Whitney* v. *Robertson, supra.* The concession or benefit which may have been accorded to Malawi by the exemption relating to its sugar, as provided in Presidential Proclamation 4547, was within the discretionary authority delegated by the Congress to the President in section 22, as amended. The President's exercise of the powers so delegated to him was not in violation of, and in fact superseded, the most-favored-nation provisions contained in the treaty and any international agreement between the United States and Argentina or in the General Agreement on Tariffs and Trade.

The motion of the defendant for summary judgment is granted, and the cross-motion of the plaintiffs for summary judgment is denied.

Let judgment be entered accordingly.

Judgment of the U.S. Court of International Trade

FARR MAN AND CO., INC., AND THE NATIONAL SUGAR REFINING COMPANY, PLAINTIFFS *v.* THE UNITED STATES, DEFENDANT

Court No. 79-10-01490

This case having been duly submitted for decision and the Court, after due deliberation, having rendered a decision herein; now, in conformity with said decision,

It is hereby ordered, adjudged, and decreed:

That the liquidation of the merchandise in issue as made by the District Director of Customs at Philadelphia, Pennsylvania, on December 8, 1978, pursuant to Presidential Proclamation 4547, is sustained, and it is further

Ordered, adjudged, and decreed:

That the above-entitled action is hereby dismissed.

Dated at New York, N.Y., July 26, 1982.

EDWARD D. RE,
Chief Judge.

FREDERICK LANDIS,
Judge.

NILS A. BOE,
Judge.

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, *August 11, 1982*

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,
Commissioner of Customs.

In the Matter of
CERTAIN MOLDED-IN SANDWICH PANEL INSERTS AND METHODS FOR THEIR INSTALLATION } Investigation No. 337-TA-99

Notice of Commission Consideration of Modification of Action, and Request for Comments

AGENCY: U.S. International Trade Commission.

ACTION: Consideration of modification of Commission action concerning remedy, public interest, and bonding.

SUMMARY: The Commission seeks written comments from the parties to investigation No. 337-TA-99, interested Government agencies, and interested members of the public on the question of whether and, if so, how the Commission action concerning remedy, public interest, and bonding in investigation No. 337-TA-99 should be modified in light of the President's disapproval of the action formerly taken. Such comments must be filed within 15 days of the publication of this notice in the Federal Register.

AUTHORITY: The authority for consideration of modification of the previous Commission action in this investigation is contained in section 211.57 of the Commission's Rules of Practice and Procedure. 46 F.R. 17533, March 18, 1981; to be codified at 19 CFR § 211.57.

SUPPLEMENTARY INFORMATION: On March 18, 1982, the Commission unanimously determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation and sale of certain molded-in sandwich panel inserts, which infringe and contribute to or induce the infringement of certain claims of U.S. Letters Patent Nos. 3,182,015, 3,271,498, and 3,392,225 (the '015, '498 and '225 patents, respectively), the effect or

tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States. The Commission accordingly issued—(1) a general exclusion order barring the subject articles from entry into the United States for the life of the '015 product patent; (2) a cease and desist order directed to the importer of the subject articles; and (3) three cease and desist orders directed to three domestic purchasers/users of the subject articles.

On June 28, 1982, the President disapproved the Commission's determination for policy reasons pursuant to 19 U.S.C. § 1337(g) indicating that the disapproval was based solely on his objections to the three cease and desist orders directed to the domestic purchasers/users of the subject articles. Because section 337 does not authorize partial disapproval of Commission remedies by the President, the President was constrained to disapprove the entire determination.

In light of the President's notification of disapproval, the original complainant, Shur-Lok Corporation, requested that the Commission institute a new investigation in this matter. Complainant further requested that the Commission reissue the general exclusion order and the cease and desist order directed to the importer. The Commission on July 27, 1982, voted instead to consider modification of the original Commission action in this investigation.

REQUEST FOR COMMENTS: The parties to investigation No. 337-TA-99, interested Government agencies, and interested members of the public are invited to submit written comments discussing (1) what relief, if any, should be ordered in light of the President's disapproval; (2) the impact such relief would have upon the public interest; and (3) the amount of bond which should be imposed during the Presidential review period should the Commission decide to order relief. The original and 14 true copies of all written comments must be filed with the Secretary, Kenneth R. Mason, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 15 days after publication of this notice in the Federal Register.

Any person desiring to submit a document (or a portion thereof) to the Commission in confidence, must request *in camera* treatment unless the information has already been granted such treatment by the Commission or the presiding officer in investigation No. 337-TA-99. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for *in camera* treatment will be treated accordingly. All nonconfidential written submissions filed in response to this notice, as well as all nonconfidential documents on the record of investigation No. 337-TA-99, are available for public inspection at the Secretary's Office during official business hours (8:45 a.m. to 5:15 p.m.).

FOR FURTHER INFORMATION CONTACT: Jane Albrecht, Esq., 202-523-1627, or Clarease E. Mitchell, Esq., 202-523-3395, Office of the General Counsel, U.S. International Trade Commission.

By order of the Commission.

Issued: August 3, 1982.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN TEXTILE SPINNING FRAMES AND AUTOMATIC DOFFERS THEREFOR } Investigation No. 337-TA-124

Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: August 2, 1982.

DONALD K. DUVALL,
Chief Administrative Law Judge.

In the Matter of
CERTAIN MINIATURE, BATTERY-OPERATED, ALL-TERRAIN, WHEELED VEHICLES } Investigation No. 337-TA-122

Notice of Amendment of Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Amendment of notice of investigation.

SUMMARY: The Commission has granted a motion to amend the notice of investigation in the above-captioned investigation to provide for (1) the issuance of a recommended determination by the presiding officer as to whether there is a violation of section 337 by August 31, 1982, (2) the issuance of a Commission decision on permanent relief within 45 days thereafter, and (3) the supervision by the presiding officer of the making of an administrative record on the issues of remedy, public interest, and bonding, such record to be certified to the Commission by August 16, 1982.

SUPPLEMENTARY INFORMATION: This invesigation is being conducted under section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and concerns alleged unfair trade practices in the importation into and sale in the United States of certain miniature, bat-

tery-operated, all-terrain, wheeled vehicles allegedly infringing U.S. Letters Patent 4,306,375 and copying of complainant's vehicles resulting in false designation of source.

The motion to amend the notice of investigation (Motion No. 122-5) was filed by the Commission investigative attorney and is supported by the other parties to the investigation. The presiding officer has recommended (Order No. 10) that the motion be granted.

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: N. Tim Yaworski, Assistant General Counsel, Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0311.

By order of the Commission.

Issued: August 2, 1982.

KENNETH R. MASON,
Secretary.

Investigation No. 731-TA-88 (Final)

CARBON STEEL WIRE ROD FROM VENEZUELA

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping duty investigation and scheduling of a hearing to be held in connection with the investigation.

EFFECTIVE DATE: July 23, 1982.

SUMMARY: As a result of an affirmative preliminary determination by the United States Department of Commerce that carbon steel wire rod from Venezuela is being sold or is likely to be sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. § (1673)) the United States International Trade Commission hereby gives notice of the institution of an investigation under section 735(b) of the Act (19 U.S.C. § 1673(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. For the purposes of this investigation, carbon steel wire rod is defined as a coiled, semifinished, hot-rolled, carbon steel product of approximately round, solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, and not partly manufactured, and valued over 4 cents per pound. As defined,

carbon steel wire rod is provided for in item 607.17 of the Tariff Schedules of the United States.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Miller (202-523-0305) Office of Investigations, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION: *Background.*—On March 25, 1982, the Commission determined, on the basis of the information developed during the course of its preliminary investigation, that there was a reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of less than fair value imports of carbon steel wire rod from Venezuela. The preliminary investigation was instituted in response to petitions filed on February 8, 1982, by seven U.S. producers of carbon steel wire rod. The Department of Commerce will make its final subsidy determination in this case on or before October 1, 1982. The Commission must make its final injury determination in this investigation within 120 days after the date of Commerce's preliminary subsidy determination or by November 20, 1982 (19 CFR § 207.25).

However, the Commission will conduct this investigation concurrently with countervailing duty investigations Nos. 701-TA-148-150 (Final) carbon steel wire rod from Belgium, Brazil, and France, so that the Commission's final determination in these four investigations concerning carbon steel wire rod will be made by November 12, 1982. Accordingly, this antidumping investigation will follow the same schedule as countervailing duty investigations, Nos. 701-TA-148-150. A public version of the staff report containing preliminary findings of fact will be placed in the public record on September 1, 1982, pursuant to section 207.21 of the Commission's Rules of Practice and Procedure (19 CFR § 207.21).

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m., e.d.t., on September 23, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on August 31, 1982. All persons desiring to appear at the hearing and make oral presentations may file prehearing briefs and should attend a prehearing conference to be held at 9:30 a.m., e.d.t., on September 8, 1982, in Room 117 of the U.S. International Trade Commission Building. Prehearing briefs must be filed on or before September 16, 1982.

Testimony at the public hearing is governed by section 207.23 of the Commission's Rules of Practice and Procedure (19 CFR § 207.23, as amended, 47 FR 6191). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to new information. All legal argu-

ments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with rule 207.22 (19 CFR § 207.22, as amended, 47 FR 6191). Posthearing briefs must conform with the provisions of rule 207.24 (47 FR 6191) and must be submitted not later than the close of business on October 6, 1982.

Written submissions.—Any person may submit to the Commission a written statement of information pertinent to the subject of these investigations. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission on or before October 6, 1982. All written submissions except for confidential business data will be available for public inspection.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6).

Service of documents.—Any interested person may appear in these investigations as a party, either in person or by representative, by filing an entry of appearance with the Secretary in accordance with section 201.11 of the Commission's rules (19 CFR § 201.11, as amended, 47 FR 6189). Each entry of appearance must be filed with the Secretary no later than 21 days after the publication of this notice in the Federal Register.

The Secretary will compile a service list from the entries of appearance filed in these final investigations and from the Commission's record in the preliminary investigations. Any party submitting a document in connection with these investigations shall, in addition to complying with section 201.8 of the Commission's rules (19 CFR § 201.8 41 FR 17710, as amended 47 FR 6188, and 47 FR 13791), serve a copy of each such document on all other parties to the investigations. Such service shall conform with the requirements set forth in section 201.16(b) of the rules (19 CFR § 201.16(b) as amended, 47 FR 6190)).

In addition to the foregoing, each document filed with the Commission in the course of these investigations must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

For further information concerning the conduct of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR § 207, 44 FR 76457 as amended in 47 FR 6190 and 47 FR 12792) and part 201, subparts A through E (19 CFR § 201).

This notice is published pursuant to section 207.20 of the Commission's Rules of Practice and Procedure (19 CFR § 207.20).

By order of the Commission.

Issued: July 28, 1982.

KENNETH R. MASON,
Secretary.

In the matter of CERTAIN TEXTILE SPINNING FRAMES AND AUTOMATIC DOFFERS THEREFOR	Investigation No. 337-TA-124

Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 2, 1982, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Platt Saco Lowell Corporation, P.O. Drawer 2327, Greenville, South Carolina 29602. The complaint alleges unfair methods of competition and unfair acts in the importation of certain textile spinning frames with automatic doffers into the United States, or in their sale, by reason of alleged infringement of claims 1 and 2 of U.S. Letters Patent 3,786,621. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation, conduct expedited temporary relief proceedings, and issue a temporary exclusion order prohibiting importation of the articles in question into the United States, except under bond. The complainant also requests that the Commission, after a full investigation, issue a permanent exclusion order.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on July 27, 1982, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is reason to believe that there is a violation or whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain textile spinning frames and automatic doffers therefor into the United States, or in their sale, by reason of alleged in-

fringement of claim 1 or 2 of U.S. Letters Patent 3,786,621, the effect of tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Platt Saco Lowell Corporation, P.O. Drawer 2327, Greenville, South Carolina 29602.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Maschinenfabrik Rieter A.G. (or Rieter Machine Works, Ltd.), 8406 Winterthur, Switzerland.

American Rieter Company, Inc., P.O. Box 4383, Spartanburg, South Carolina 29303.

Kabushiki Kaisha Toyoda, Jidoshokki Seisakusho (or Toyoda Automatic Loom Works, Ltd.), 1, Toyoda-cho 2-chome, Kariya-schi, Aichi-ken, Japan.

Toyoda Textile Machinery, Inc., P.O. Box 241047, Charlotte, North Carolina 28224.

Schubert & Salzer Maschinenfabrik Aktiengesellschaft, Postfach 260, D–807, Ingolstadt, Federal Republic of Germany.

Schubert & Salzer Machine Works, Inc., P.O. Box 589, Pendleton, South Carolina 29670.

(c) Jeffrey Neeley, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 132, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation, and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer. The Commission notes that complainant has requested that, in order for temporary relief to be effective, a "recommended determination" as to whether there is a reason to believe there is a violation of section 337 be issued within forty-five (45) days from the date of publication of this notice in the Federal Register. In light of this request and the allegations contained in the complaint, the Commission requests that the presiding officer give expeditious consideration to the request for temporary relief. Pursuant to Commission rule 210.30(c), discovery should be allowed in connection with the temporary relief phase of the investigation only to the extent necessary to weigh the standards that are applicable in determining whether temporary relief should be granted;

(4) The presiding officer shall also establish a schedule for oral presentations concerning the remedy, bonding, and public-interest aspects of the investigation for the purpose of creating an administrative record to be certified to the Commission five (5) days after

issuance of the initial determination on whether there is reason to believe there is a violation of section 337. In addition, the presiding officer shall provide for a prehearing briefing schedule to be published in the Federal Register soliciting the written views of any persons interested in the temporary relief phase of the investigation. The transcript of the oral presentations, the prehearing briefs, and any other written materials shall constitute the administrative record concerning remedy, bonding, and the public interest to be certified to the Commission.

Responses conforming to the requirements of section 210.21(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.21(b)) must be submitted by each named respondent. Such responses will be considered by the Commission if received not later than twenty (20) days after the date of service of the complaint. The presiding officer is hereby authorized to shorten the time period for responses.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein or appended thereto, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0176.

FOR FURTHER INFORMATION CONTACT: Jeffrey Neeley, Esq., Unfair Import Investigations Division, Room 132, U.S. International Trade Commission, telephone 202-523-0115.

By order of the Commission.

Issued: July 30, 1982.

KENNETH R. MASON,
Secretary.

Index

U.S. Customs Service

U.S. GOVERNMENT PRINTING OFFICE: 1982 O - 378-296

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

POSTAGE AND FEES PAID
DEPARTMENT OF THE TREASURY (CUSTOMS)
(TREAS. 552)

CB SERIA300SDISSDUE01OR 1 **
SERIALS PROCESSING DEPT **
UNIV MICROFILMS INTL **
300 N ZEEB RD **
ANN ARBOR MI 48106 **